

---

---

COMMONWEALTH OF MASSACHUSETTS  
SUPREME JUDICIAL COURT

A.C. No. 2020-P-1100  
No. FAR-29191

---

---

COMMONWEALTH OF MASSACHUSETTS,  
  
*Plaintiff-Appellee,*

v.

EDEN C. JACQUES,  
  
*Defendant-Appellant.*

---

On Appeal from Judgments of the Suffolk Superior Court

---

Application for Further Appellate Review

---

March 16, 2023

Joshua M. Daniels (BBO# 673034)  
THE LAW OFFICE OF  
JOSHUA M. DANIELS  
P.O. Box 300765  
Jamaica Plain, MA 02130  
(617) 942-2190  
jdaniels@danielsappeals.com

*Counsel for Defendant-Appellant*

## TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	3
REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW .....	5
INTRODUCTION .....	5
STATEMENT OF PRIOR PROCEEDINGS .....	7
STATEMENT OF FACTS RELEVANT TO THE APPEAL.....	8
POINTS ON WHICH FURTHER APPELLATE REVIEW IS SOUGHT.....	11
REASONS WHY FURTHER APPELLATE REVIEW IS APPROPRIATE .....	12
I. This Court should clarify whether sexual-assault accusations are sexual-conduct evidence under the rape-shield statute. ....	12
II. The Appeals Court’s analysis of the rape-shield statute’s constitutional safety valve conflicts with prior cases. ....	13
III. The Appeals Court’s rejection of Mr. Jacques’s challenge to the closing argument also warrants correction.....	18
CONCLUSION .....	19
MASS. R. A. P. COMPLIANCE CERTIFICATION .....	21
CERTIFICATE OF SERVICE .....	21
ADDENDUM.....	22

## TABLE OF AUTHORITIES

### Cases

<i>Bradford v. Baystate Med. Ctr.</i> , 415 Mass. 202 (1993).....	19
<i>Brown v. Commonwealth</i> , 29 Va. App. 199 (1999) .....	14
<i>Commonwealth v. Beaudry</i> , 445 Mass. 577 (2005).....	19
<i>Commonwealth v. Bohannon</i> , 376 Mass. 90 (1978).....	12
<i>Commonwealth v. Civello</i> , 39 Mass. App. Ct. 373 (1995) .....	12
<i>Commonwealth v. Fitzgerald</i> , 412 Mass. 516 (1992).....	17, 18
<i>Commonwealth v. Frey</i> , 390 Mass. 245 (1983).....	16
<i>Commonwealth v. Harris</i> , 443 Mass. 714 (2005).....	17, 19
<i>Commonwealth v. Jacques</i> , 102 Mass. App. Ct. 157 (2023) .....	6
<i>Commonwealth v. Joyce</i> , 382 Mass. 222 (1981).....	16, 17, 18
<i>Commonwealth v. Lopez</i> , 474 Mass. 690 (2016).....	19
<i>Commonwealth v. Parent</i> , 465 Mass. 395 (2013).....	13
<i>Commonwealth v. Polk</i> , 462 Mass. 23 (2012).....	6, 14, 18
<i>Commonwealth v. Ruffen</i> , 21 Mass. App. Ct. 90 (1985), S.C., 399 Mass. 811 (1987) .....	14

<i>Commonwealth v. Ruffen</i> , 399 Mass. 811 (1987) .....	13, 14, 15, 17
<i>Commonwealth v. Stockhammer</i> , 409 Mass. 867 (1991) .....	17
<i>Commonwealth v. Thevenin</i> , 33 Mass. App. Ct. 588 (1992) .....	18
<i>Darden v. Wainwright</i> , 477 U.S. 168 (1986) .....	18
<i>Davis v. Alaska</i> , 415 U.S. 308 (1974) .....	13
<i>People v. Grano</i> , 286 Ill. App. 3d 278 (1996) .....	13

## **Constitutional Provisions**

Article 12 of the Massachusetts Declaration of Rights.....	6, 11, 19
Sixth Amendment to the United States Constitution .....	6, 11, 19
Fourteenth Amendment to the United States Constitution .....	6, 19

## **Statutes**

G. L. c. 211A, § 11 .....	5
G. L. c. 233, § 21B.....	<i>passim</i>

## **Rules**

Mass. R. A. P. 27 .....	8
Mass. R. A. P. 27.1 .....	5
Mass. R. A. P. 27.1(b)(2) .....	8
Mass. R. A. P. 27.1(b)(3) .....	8



## **REQUEST FOR LEAVE TO OBTAIN FURTHER APPELLATE REVIEW**

Eden C. Jacques requests leave under G. L. c. 211A, § 11, and Mass. R. A. P. 27.1 to obtain further appellate review (FAR) of the Appeals Court’s published decision affirming his sex-offense convictions.

### **INTRODUCTION**

At his trial for alleged sexual assaults against “Kathy” and “Denise,” two girls with whom he once lived, Mr. Jacques tried to show that many of Denise’s initial allegations against him mirrored those she made against another man, Maurice Berry, even “using almost identical language.” A.24. The defense argued that these uncanny similarities supplied powerful circumstantial evidence to support its theory that, using her experience with Mr. Berry as a template, Denise fabricated her claims against Mr. Jacques because she wanted him gone from her home. And by undermining Denise’s credibility, the defense would have also undermined Kathy’s: without any other corroboration, the Commonwealth leaned heavily on the fact that “two different girls, [in] two different houses” both claimed that Mr. Jacques had molested them. A.342.

But although the trial judge recognized that this evidence was not offered to show promiscuity or sexual activity on the alleged victims’ part, he still excluded it under the rape-shield statute, see G. L. c. 233, § 21B, leaving the defense unable to offer its best evidence of fabrication. Even worse, he then refused to intervene, despite defense counsel’s objections, when the prosecutor twice argued in closing that “this is not recycled accusation or recycled information”—knowing that the defense had been

blocked from showing otherwise. A.339-40. Mr. Jacques appealed, claiming that these rulings violated his federal and state constitutional rights to cross-examination and to fairly present his defense under the Sixth and Fourteenth Amendments to the United States Constitution and art. 12 of the Massachusetts Declaration of Rights.

While conceding that “the case is indeed a close one,” the Appeals Court affirmed in a published decision. A.39; see *Commonwealth v. Jacques*, 102 Mass. App. Ct. 157 (2023). Devoting nearly all its attention to the judge’s rape-shield ruling, the Appeals Court looked to this Court’s most recent guidance on that subject. A.38, citing *Commonwealth v. Polk*, 462 Mass. 23 (2012). It visibly struggled to apply that guidance here, apparently believing that *Polk*’s formulation of the constitutional standard “beg[s] the question of how one defines the boundaries of the constitutional right,” A.33, and may not adequately “capture” the “highly fact dependent” analysis required. A.41. Ultimately, the Appeals Court perceived no constitutional violation.

As explained below, the reasoning the Appeals Court used to arrive at that conclusion breaks sharply from many precedential rape-shield cases. Its published decision thus risks creating much confusion over whether and to what extent those precedents still govern. Indeed, if taken literally, it will effectively remove the constitutional safety valve this Court has for decades read into the statute. There is thus an urgent need for this Court once again, and for the first time in over a decade, to clarify its rape-shield jurisprudence. It should grant FAR here to do just that.

## STATEMENT OF PRIOR PROCEEDINGS

In November 2016, the Commonwealth indicted Mr. Jacques for sexual offenses against Kathy and Denise. A.25-26, 49-53. The charges included indecent assault and battery, assault with intent to rape a child, and rape of a child aggravated by age difference. A.29-30, 49-53.<sup>1</sup> Two years later, he stood trial before a Suffolk County jury (Hon. Robert L. Ullmann, J., presiding). A.72-74.

Before trial, the Commonwealth moved under the rape-shield statute, G. L. c. 233, § 21B, to preclude the defense from questioning Denise about similar allegations she had made against another man, Maurice Berry. A.72, 79-85. The judge at first reserved his ruling, but ultimately allowed the motion and excluded the evidence, after defense counsel made a detailed offer of proof. A.106, 110-12, 187-96. The jury later acquitted Mr. Jacques on many charges, including all the aggravated rape counts, but found him guilty of assault with intent to rape and of indecent assault and battery on both Denise and Kathy. A.356-64.<sup>2</sup> The judge sentenced him to serve between seven and ten years in State prison on two of the charges, with five years' probation from and after on the remaining counts. A.75-76.

---

<sup>1</sup> Mr. Jacques was also indicted for allegedly destroying evidence related to the investigation of those offenses, and the two cases were consolidated for trial; he raised no issue on appeal about that conviction. See A.30 n.5.

<sup>2</sup> Six other counts were dismissed or nolle prossed, either before or during trial. A.49-53, 62, 73-75.

Mr. Jacques timely appealed from his convictions on November 26, 2019. A.77, 365. The case entered in the Appeals Court a year later. A.46. A panel of that Court (Green, C.J., Henry & Englander, JJ.) heard oral argument in October 2022. A.47. Almost four months later, the Appeals Court affirmed Mr. Jacques’s convictions in a published opinion by Justice Englander. A.23-44. Mr. Jacques sought and received an enlargement of time for filing this FAR application. See Dkt., No. FAR-29191, Paper No. 1. No one has sought reconsideration or modification of the Appeals Court’s decision under Mass. R. A. P. 27. See A.47; Mass. R. A. P. 27.1(b)(2).

#### **STATEMENT OF FACTS RELEVANT TO THE APPEAL**

The Appeals Court’s factual recitations are—with one exception—mostly correct but materially incomplete. See Mass. R. A. P. 27.1(b)(3).

For starters, the decision downplays the similarity between Denise’s allegations against Mr. Jacques and her allegations against Mr. Berry. See A.187-89. “For example,” the Appeals Court mentions, Denise accused both men of “[getting] into bed with Denise and her sister and rubb[ing] their legs,” until “Denise said to [them] that they were ‘going to have a problem’ if [they] continued.” A.28. But the similarities between the two episodes alleged did not end there. Although each episode reportedly occurred at a different residence, in both cases Denise claimed to have been sleeping in the same room—the living room—next to the same younger sister, “Jane” (a pseudonym). Compare A.122-23, 178-79 with A.232, 237-39. The two stories were thus nearly identical.

Nor was that episode the only commonality between the two sets of allegations. For instance, Denise also testified at Mr. Jacques's trial that her aunt, Mr. Jacques's then-girlfriend, "told [her] to be careful with him because he was sneaky." A.162-64. Denise told investigators that a different aunt had given her the same warning about Mr. Berry: "one day my aunt told me to watch out for him like because he's like sneaky." A.236. And she claimed that, besides "walk[ing] around the apartment holding [their] penis[es]," A.28, both men had also propositioned her on nearly identical terms, each offering an identical sum (\$20) if she would either dance for or have sex with them. Compare A.185 with A.252.<sup>3</sup>

The Appeals Court also overlooks the judge's actual rationale for keeping out the Berry evidence. A.29. The judge read Massachusetts's rape-shield case law as carving out only a few "limited exceptions to the rape shield statute," such as showing serial fabrication or the confabulation of separate incidents. See A.189-90, 195. Because he had "found no case that allows the evidence in under this particular theory," the judge saw no basis for allowing the cross-examination. A.195; see also A.112

---

<sup>3</sup> At one point, the Appeals Court's decision also suggests that the Commonwealth could have "sought to rebut any inference [of fabrication] ... by introducing that [Mr. Berry] had been tried, and convicted, of sexual assault." A.42-43. To be clear, Mr. Berry was only ever tried for assaulting "a different victim," not Denise. See Oral Arg., No. 2020-P-1100, at 13:47, *available at* <https://www.ma-appellatecourts.org> (Green, C.J.). And because Mr. Jacques never claimed that Denise's allegations against Mr. Berry were false, see A.40-41, the sort of rebuttal the Appeals Court anticipates would have accomplished nothing in any event.

(requiring defense counsel to “ideally find ... a case or two under which similar evidence was admissible”). Rather than evaluate that reasoning, the Appeals Court’s decision focuses instead on concerns about “prolong[ing] the trial and ... confus[ing] the issues.” A.35; see also A.42-43.

But contrary to what the Appeals Court’s decision suggests, the judge himself never voiced those concerns. Instead, he pointed to what he saw as the rape-shield statute’s “policy of protecting women, and ... even more so, protecting children,” A.196, echoing his earlier worry that the defense’s desired line of cross-examination might “dredge up yet another victimization.” A.100. At the same time, however, he repeatedly recognized that the Berry evidence did “connect in some way to the defense theory of the case” and “clearly [was] not being done to suggest that [Jane] and [Denise] are promiscuous ... [o]r sexually active”—concessions that the Appeals Court’s decision omits. A.100; see also A.103.

Finally, the Appeals Court is incorrect that “defense counsel argued, in essence, that Denise’s allegations were borrowed from information relayed to her by Kathy” and “that Denise’s allegations were recycled from Kathy.” A.43. At no point did defense counsel ever claim that Denise had “recycled” or “borrowed” Kathy’s allegations for her own. See A.317-334; *id.* at 352 (“I never claimed it came from [Kathy], I claimed it came from the [Berry incident], and now she’s able to argue to them, look, she didn’t get this story from somewhere else, it has to be true.”). Instead, he argued that Denise knew that Kathy had made accusations against Mr. Jacques and knew that the other household members were aware of them, too—

priming them to believe any new accusations that might emerge. See A.328 (“A false allegation by [Kathy] leads to him being the guy who touched [Kathy], and that’s how they see him and that’s how [Denise] first learned about Mr. Jacques.”). Indeed, the only mention of “recycling” came during the *prosecutor’s* closing, not defense counsel’s. A.339-40.<sup>4</sup>

### **POINTS ON WHICH FURTHER APPELLATE REVIEW IS SOUGHT**

I. Whether reporting the details of an earlier unrelated sexual assault to investigators qualifies as “[e]vidence of specific instances of a victim’s sexual conduct” under Massachusetts’s rape-shield statute, G. L. c. 233, § 21B.

II. Whether a trial judge violates a defendant’s constitutional right to present a defense and confront adverse witnesses under the Sixth Amendment and art. 12 by citing the rape-shield statute to prevent him from pointing out the substantial similarity between his accuser’s allegations against him and others made against another individual, arguably suggesting fabrication.

---

<sup>4</sup> The Appeals Court’s decision overlooks two other problematic remarks in the Commonwealth’s closing. First, the prosecutor suggested that the “graphic details” of Kathy’s account showed that they came from her personal experience of abuse rather than “from her father or grandmother,” A.340, as the defense had suggested. A.322. Second, the prosecutor also argued that the girls’ decision to “speak[ ] to [the jury] years later,” despite the personal hardships their accusations had caused them, enhanced both girls’ credibility as witnesses. A.343. Mr. Jacques argued that these remarks confirmed the need for reversal; the Appeals Court never addressed them. See Jacques Br. 35-37; A.43-44.

III. Whether the Commonwealth’s unfair exploitation of the rape-shield exclusion it requested and other improprieties in its closing argument independently warrants reversal of the sexual-assault convictions.

**REASONS WHY FURTHER APPELLATE REVIEW IS APPROPRIATE**

**I. This Court should clarify whether sexual-assault accusations are sexual-conduct evidence under the rape-shield statute.**

Mr. Jacques argued that the rape-shield statute’s prohibition of “[e]vidence of ... a victim’s sexual conduct,” G. L. c. 233, § 21B, did not apply here “because the evidence at issue merely consists of Denise’s prior allegations of sexual assault [against Mr. Berry], and ‘accusing someone of sexual assault is not itself “sexual conduct” under the statute.’”

A.31. That position has support in *Commonwealth v. Bohannon*, 376 Mass. 90, 95 (1978), where this Court expressly distinguished “prior allegations of rape” from what the statute bars: “prior sexual activity or reputation for chastity.” The Appeals Court once followed that same tack, holding in *Commonwealth v. Civello*, 39 Mass. App. Ct. 373, 376 & n.2, 379 (1995), that a prior sexual-assault accusation did not “implicat[e] the ‘rape shield’ statute,” even though—as in this case but unlike in *Bohannon*—its truth was unchallenged.

Yet the Appeals Court rejected that argument in a footnote, without ever addressing *Bohannon* or *Civello*’s language. A.33 n.6. In fact, it seemed to read *Bohannon* as a rape-shield case, A.41, even though *Bohannon* itself expressly disclaimed any need to “reach any issues related to the recently enacted ‘rape-shield’ statute.” 376 Mass. at 95.



As the Appeals Court itself acknowledged, moreover, the boundaries of what the statute considers “sexual conduct” are still “undefined”—particularly when it comes to speech that, although it may *refer* to sexual conduct, is not *itself* a sexual act (but a verbal one). See A.32-33, citing *Commonwealth v. Parent*, 465 Mass. 395, 404-05 (2013). Nor is there consensus on this issue in other jurisdictions. See, e.g., *People v. Grano*, 286 Ill. App. 3d 278, 288 (1996) (“Language or conversation does not constitute sexual activity.”). This Court should grant FAR to address this unsettled and important question.

## **II. The Appeals Court’s analysis of the rape-shield statute’s constitutional safety valve conflicts with prior cases.**

Even if the Appeals Court were right about the rape-shield statute’s scope, its resolution of the interplay between the statute and Mr. Jacques’s constitutional right to cross-examine adverse witnesses and present his defense, see, e.g., *Davis v. Alaska*, 415 U.S. 308, 315-16 (1974), departs from prior precedents, often without saying so. The crux of its analysis is its conclusion that Mr. Jacques lacked “a constitutional right to cross-examine [Denise] regarding her prior, other act allegations involving [Mr. Berry] that are not alleged to have been false.” A.41.

That conclusion does not square with (among other cases) *Commonwealth v. Ruffen*, 399 Mass. 811 (1987). In *Ruffen*, the defense tried to show that the alleged victim had been abused before and that the prior abuse “explain[ed] how she had acquired sufficient information [about sexual matters] to enable her to describe [the alleged] acts of sexual

abuse.” *Id.* at 814. It planned to argue that her past abuse allowed her “to fabricate the details of a sexual molestation.” *Commonwealth v. Ruffen*, 21 Mass. App. Ct. 90, 95 (1985), *S.C.*, 399 Mass. 811 (1987). In other words, the defense theory in *Ruffen* was functionally the same theory asserted here: that the “prior abuse helped her to fabricate the allegations against the defendant.” A.40. And this Court held that the defendant had a constitutional right to offer evidence of prior sexual abuse similar to that alleged. See *Ruffen*, 399 Mass. at 815-17.

Yet the Appeals Court did not even cite *Ruffen* here, much less address it, even though Mr. Jacques relied on it heavily. Compare A.30-43 with A.189-90, 195. Its failure to do so is puzzling given its concern that Mr. Jacques’s theory—just like that in *Ruffen*—was “not one of confabulation or mistaken identification, but rather that Denise’s prior abuse helped her to fabricate.” A.40. And in any event, it is hard to see why the distinction it draws between confabulation and fabrication even matters. All that mattered here was the apparent recycling of Denise’s allegations. Regardless whether that recycling was intentional or inadvertent, it still bore powerfully on Denise’s credibility. See *Polk*, 462 Mass. at 38-39; see also *Brown v. Commonwealth*, 29 Va. App. 199, 215-16 (1999) (allowing cross-examination about allegations in unrelated rape case because “substantial similarities may suggest fabrication”). And as long as the narratives are similar, they allow for a reasonable inference of recycling. See *Ruffen*, 399 Mass. at 815-16; *Brown*, 29 Va. App. at 215-16.

For his part, the judge below seemed to accept the Commonwealth's argument that, as some Appeals Court cases have suggested in dicta, *Ruffen* applies only when a young child shows "extraordinary" sexual knowledge. See A.190; A.84 and cases cited. But *Ruffen* said nothing of the sort. To the contrary, it expressly contemplated cases like this, in which "the defendant wishes to use evidence of the victim's prior abuse for a purpose *other than* to show knowledge about sexual acts and terminology." 399 Mass. at 816 (emphasis added). And it allowed defendants to do so if they can "show how the evidence of prior abuse is relevant" to credibility, which in turn will often require "a showing by the defendant of prior similar sexual abuse." *Id.* Mr. Jacques did that here, A.187-89, so he should have been allowed to proceed, just like the defendant in *Ruffen*.

The Appeals Court's approach to the rape-shield issue conflicts with other cases as well. For example, the Appeals Court appears to have concluded that Mr. Jacques failed to meet his constitutional burden because, in *its* view, "the probative value of the proffered testimony [was] certainly debatable," A.42, and "the inference [he] wished to argue from Denise's prior allegations ... was quite attenuated." A.41.<sup>5</sup>

But that reasoning views the evidence through the wrong lens. Instead, as this Court has instructed, courts are supposed to determine

---

<sup>5</sup> That "only a few of [Denise's] allegations mirrored her prior allegations against the other perpetrator," A.40, overlooks her story's pretrial evolution. See A.27. Her apparent decision to abandon her initial, similar claims for dissimilar ones as the case proceeded to trial hardly diminishes the importance of those initial similarities to her credibility.

whether the evidence at issue, if believed, has “a ‘rational tendency to prove an issue in the case,’” *Commonwealth v. Joyce*, 382 Mass. 222, 230 (1981) (citation omitted)—here the complaining witness’s credibility. And because “the defendant is entitled to present his own theory of the [case] to the jury,” the availability of competing views of the evidence does not justify exclusion. *Id.* Rather, limiting the defense is justified only if a court can “say that th[e] evidence has *no* rational tendency to prove” the defense theory. *Id.* (emphasis added); contrast *Commonwealth v. Frey*, 390 Mass. 245, 251 (1983) (upholding exclusion of stale sexual history because it had “no tendency” to show bias or ulterior motive).

In other words, even if “the probative value of the proffered testimony is [merely] debatable,” A.42, then it is still the *jury* who should resolve that debate—not the judge, as the Appeals Court seemed to suggest. Compare *id.* with *Joyce*, 382 Mass. at 230. The Appeals Court’s decision effectively reverses that baseline, forcing defendants to show that the inferences they urge are not just “rational,” *Joyce*, 382 Mass. at 230, but “compelling.” See A.40. And because its decision is published, it risks substantial confusion over whether *Joyce* accurately reflects the current state of the law.

Nor is the potential for confusion limited to that point. The Appeals Court’s decision goes out of its way to suggest that, because so-called “other acts” evidence is so “disfavored,” a judge has almost plenary discretion to exclude it. See A.34-36. In its view, the rape-shield statute’s specific prohibition on sexual-conduct evidence is almost superfluous: if

the evidence is of “other acts” “collateral to the issued being tried,” then “a judge can *always* intervene ‘to prevent the danger of overwhelming a case with’ it.” A.36 (citation omitted and emphasis added). As the Appeals Court sees things, even a defendant’s constitutional rights “do not substantially alter” that discretion. A.42.<sup>6</sup>

That gloss is difficult to reconcile with the many rape-shield cases that have *reversed* exclusions of other-sexual-acts evidence that still bore materially on the accuser’s reliability. See, e.g., *Commonwealth v. Fitzgerald*, 412 Mass. 516, 520, 523-24 (1992) (allowing cross-examination about whether victim had sex with anyone else on night of attack); *Stockhammer*, 409 Mass. at 876-77 (allowing evidence of sexual activity to show victim’s desire to avoid alienating parents and boyfriend); *Ruffen*, 399 Mass. at 815-17 (allowing evidence of prior sexual abuse to show victim’s ability to fabricate); *Joyce*, 382 Mass. at 225, 230 (allowing evidence of prior prostitution charges to show victim’s motive to avoid arrest).

Taken together, these cases teach that a rape-shield exclusion’s propriety depends on the proffered evidence’s relevance to the defense’s case, the purpose for which it is offered, and its compatibility with the statute’s

---

<sup>6</sup> The Appeals Court’s effort to justify the judge’s exercise of discretion based on concerns he never expressed is equally problematic. See *supra* at 9-10; *Commonwealth v. Stockhammer*, 409 Mass. 867, 880 (1991) (refusing to speculate whether judge prohibited cross-examination on grounds not mentioned); accord *Commonwealth v. Harris*, 443 Mass. 714, 729 (2005) (“That the exercise of discretion could, had it been undertaken, permissibly have resulted in the same decision ... does not necessarily insulate the error from reversal.”).

“principal[ ]” aim: “prevent[ing] defense counsel from eliciting evidence of the victim’s promiscuity as part of a general credibility attack.” *Fitzgerald*, 412 Mass. at 523. When that core concern is absent and the evidence is otherwise relevant, courts have usually held it error to exclude it. See, e.g., *id.* at 523-24; *Joyce*, 382 Mass. at 224, 230-31; *Commonwealth v. Thevenin*, 33 Mass. App. Ct. 588, 592 (1992), and cases cited. And again, here the judge expressly disclaimed any promiscuity-related concerns. A.100, 103.

The Appeals Court’s reasoning here strays from these cases. Nor can all of them be distinguished on the same basis it used to distinguish *Polk* (that the defense theory was misidentification). See A.39-40. In seemingly departing—without explanation—from this body of case law, the Appeals Court’s decision threatens to call its continued validity into serious doubt. This Court should step in now to prevent that doubt from taking hold.

### **III. The Appeals Court’s rejection of Mr. Jacques’s challenge to the closing argument also warrants correction.**

Even if the Berry allegations were properly excluded, the prosecutor improperly capitalized on that ruling in closing argument by contending that the allegations were “not recycled.” A.339-40. Despite objection, the judge took no action. A.351-54. By hamstringing the defense and then seizing on the disability that it created, the Commonwealth “infected the trial with unfairness,” *Darden v. Wainwright*, 477 U.S. 168, 181 (1986) (citation omitted), violating Mr. Jacques’s due-process rights under the

Sixth and Fourteenth Amendments and art. 12.

As this Court has held, it is “‘fundamentally unfair’ and ‘reprehensible’” for the Commonwealth to rely in closing on a lack of evidence excluded at its own request. *Harris*, 443 Mass. at 732 (citations omitted). That conduct alone may warrant reversal even when unobjected-to. *Id.* at 732-33. Yet the Appeals Court brushed it off with a single citation to *Commonwealth v. Lopez*, see A.44, a case in which—unlike here, see *supra* at 10-11—“the prosecutor never made a direct reference to the excluded evidence.” 474 Mass. 690, 699 (2016). Nor did it address other remarks that Mr. Jacques also challenged, such as the prosecutor’s unsupported suggestion that Kathy lacked prior sexual knowledge or her request that both girls’ decision to “speak[ ] to [the jury] years later” enhanced their credibility. See *supra* at 11 n.4; see *Commonwealth v. Beaudry*, 445 Mass. 577, 580-81, 587-88 (2005).

The Appeals Court’s approach to these issues was just as flawed as its approach to the rape-shield issues. This Court should therefore not limit FAR to those issues but “review all issues that were before the Appeals Court,” per its “general rule.” *Bradford v. Baystate Med. Ctr.*, 415 Mass. 202, 204 (1993).

### CONCLUSION

This Court should allow Mr. Jacques’s application for FAR both to clarify its rape-shield jurisprudence and to prevent the substantial confusion that the decision below threatens to create.

March 16, 2023

Respectfully submitted,

EDEN C. JACQUES

By his attorney,

/s/ Joshua M. Daniels  
Joshua M. Daniels (BBO# 673034)  
THE LAW OFFICE OF  
JOSHUA M. DANIELS  
P.O. Box 300765  
Jamaica Plain, MA 02130  
(617) 942-2190  
jdaniels@danielsappeals.com

*Counsel for Defendant-Appellant*



## MASS. R. A. P. COMPLIANCE CERTIFICATION

I, Joshua M. Daniels, certify that this Application for Further Appellate Review complies with the rules of court that pertain to the filing of such papers, including, but not limited to, Mass. R. A. P. 20 (form of briefs, appendices, and other papers) and Mass. R. A. P. 27.1 (further appellate review).

I also certify that this Application for Further Appellate Review has been produced using 14-point Century Schoolbook, a proportionally spaced font. I certify as well that the statement of reasons why further appellate review is appropriate that is required under Mass. R. A. P. 27.1(b)(5) contains 2,000 words (including headings, footnotes, and quotations), which I calculated using the Word Count feature of Microsoft Word for Office 365.

/s/ Joshua M. Daniels

Joshua M. Daniels (BBO# 673034)

## CERTIFICATE OF SERVICE

I, Joshua M. Daniels, certify that on March 16, 2023, I caused a copy of this Application for Further Appellate Review to be filed through the efileMA system, which will electronically send true copies to the following counsel of record who are registered participants:

David McGowan, Esq.

Andrew S. Doherty, Esq.

OFFICE OF THE DISTRICT ATTORNEY—MIDDLESEX

One Bulfinch Place

Boston, MA 02114

david.mcgowan@state.ma.us

andrew.doherty@state.ma.us

/s/ Joshua M. Daniels

Joshua M. Daniels (BBO# 673034)

## ADDENDUM

Appeals Court Decision .....	A.23
Appeals Court Docket Entries, No. 2020-P-1100.....	A.45
Superior Court Docket Entries, No. 1684CR00862 .....	A.48
Commonwealth’s Motion <i>in Limine</i> to Preclude Reference to Any Alleged Experience of the Victim with Individuals Other Than the Defendant (Nov. 5, 2019) .....	A.79
Excerpt from Transcript of Pretrial Hearing on Motions <i>in Limine</i> (Nov. 12, 2019) .....	A.86
Excerpt from Trial Transcript (Nov. 13, 2019) .....	A.108
Excerpt from Trial Transcript (Nov. 19, 2019) .....	A.114
Exhibit F for Identification, SAIN Interview of Denise (Oct. 4, 2017) <sup>7</sup> .....	A.218
Excerpt from Trial Transcript (Nov. 21, 2019) .....	A.315
Verdict Slips, No. 1684CR00862 (Nov. 22, 2019).....	A.356
Notice of Appeal (Nov. 26, 2019).....	A.365

---

<sup>7</sup> As noted at trial, the interview transcript mistakenly identifies the trial prosecutor as the SAIN interviewer. A.197-98.

NOTICE: All slip opinions and orders are subject to formal revision and are superseded by the advance sheets and bound volumes of the Official Reports. If you find a typographical error or other formal error, please notify the Reporter of Decisions, Supreme Judicial Court, John Adams Courthouse, 1 Pemberton Square, Suite 2500, Boston, MA, 02108-1750; (617) 557-1030; SJCRReporter@sjc.state.ma.us

20-P-1100

Appeals Court

COMMONWEALTH vs. EDEN JACQUES.

No. 20-P-1100.

Suffolk. October 6, 2022. - January 17, 2023.

Present: Green, C.J., Henry, & Englander, JJ.

Assault with Intent to Rape. Indecent Assault and Battery.  
Child Abuse. Rape-Shield Statute. Witness, Credibility,  
Cross-examination. Evidence, Sexual conduct, Credibility  
of witness. Constitutional Law, Confrontation of  
witnesses. Practice, Criminal, Confrontation of witnesses,  
Argument by prosecutor.

Indictments found and returned in the Superior Court Department on November 15, 2016, and November 7, 2017.

The cases were tried before Robert L. Ullman, J.

Joshua M. Daniels for the defendant.  
Andrew Shepard Doherty, Assistant District Attorney, for  
the Commonwealth.

ENGLANDER, J. After a jury trial, the defendant was convicted of multiple sexual assaults of two young girls, ages six and fifteen, each members of a household in which the defendant also resided. On appeal, the defendant principally

challenges the judge's decision to exclude evidence that would have shown that prior to accusing the defendant, the older of the two victims had made similar allegations against another member of a different household in which she resided, in some aspects using almost identical language.

The defendant argues that the proffered evidence was highly relevant to his defense that the charges against him were fabricated, and that the evidence was not excludable under the rape shield statute, G. L. c. 233, § 21B. The defendant does not claim that the victim's prior allegations were false, but rather, he claims that the jury should have been told of the prior allegations because their similarity undermines the credibility of the victim's allegations against the defendant, and further, because the prior events show the victim's knowledge that, by making such allegations, the defendant likely would be removed from her home. The defendant accordingly argues that the exclusion of the evidence deprived him of his constitutional rights to confront the witnesses against him and to present an appropriate defense. We conclude that the judge's exclusion of the evidence neither was an abuse of discretion nor deprived the defendant of his constitutional rights, and accordingly we affirm.

Background. 1. Victim 1 (Kathy).<sup>1</sup> The first victim, Kathy, was eleven years old when she testified at trial. She testified that she was six when the defendant came to live with her mother in their apartment in Boston.

Kathy testified to occasions when the defendant sexually abused her while the defendant resided at the Boston apartment. On one such occasion Kathy was sleeping alone in her mother's room when the defendant got on top of her, naked, and touched her vagina with his penis. On another occasion, Kathy was standing in the basement of the apartment when the defendant penetrated her vagina while standing behind her. Kathy also testified that the defendant touched her thigh near her vagina with his hand while carrying Kathy on his shoulders.

Through cross-examination, defense counsel established that Kathy had changed some of her descriptions of the abuse she suffered, and also highlighted that Kathy could not remember details surrounding these events.

2. Victim 2 (Denise).<sup>2</sup> The second victim, Denise, was fifteen years old when she moved with her mother, her two younger sisters, and her brother to a house in Boston, where they stayed with her aunt. The defendant was her aunt's

---

<sup>1</sup> A pseudonym.

<sup>2</sup> A pseudonym.

boyfriend, and he also moved into the home. Denise testified that at first, she got along fine with the defendant. After some time, however, Denise grew to dislike the defendant because the defendant physically punished Denise's younger sisters (one of whom was just two or three years old), and got into fights with her older brother.

Denise testified to several sexual assaults by the defendant. On one occasion, the defendant lay down next to Denise on a bed in her aunt's bedroom, took the covers off her, and rubbed her legs. On that same occasion, he eventually laid Denise over a stool or chair, and penetrated Denise's vagina with his penis. In other instances, when Denise was sleeping in the living room, the defendant would enter the living room, take the covers off her, pull up her shirt, and touch her breasts with his hands. Denise also testified that the defendant once moved Denise's clothes and underwear aside and touched and licked her vagina.

In addition to incidents described above, Denise also testified about observing a video recording on the defendant's cell phone. In that recording Denise saw one of her sisters naked from the waist down, and the defendant rubbing her sister's buttocks. While no such video was introduced at trial, there was evidence that at the conclusion of a police interview,

the defendant grabbed his cell phone and destroyed it in the interview room.

Defense counsel's cross-examination of Denise was lengthy and made several points. Counsel first established that Denise did not like the defendant, because the defendant mistreated her younger siblings, would fight with her older brother, and would argue with her mother and her aunt. Next, counsel established that Denise's trial testimony varied in several respects from her prior statements to the police. For example, although Denise testified at trial that the defendant had touched her vagina, she said at a prior interview that the defendant had not done so. Counsel also established inconsistencies between Denise's trial testimony and her interview responses concerning the cell phone video. Specifically, Denise said during her interviews that she saw the defendant's penis in that video, but during her direct examination, she testified that she saw only the defendant's hands.

Finally, counsel sought to introduce the evidence that Denise previously had made allegations against another person -- also a previous household member -- that were similar to allegations Denise made against the defendant. To do this counsel first had to introduce the allegations that Denise had made against the defendant in prior interviews, because Denise had not repeated several of the prior allegations in her trial

testimony. For example, counsel elicited that in a prior interview Denise had described an instance in which the defendant got into bed with Denise and her sister and rubbed their legs, at which time Denise said to the defendant that they were "going to have a problem" if he continued. Denise had also previously reported that the defendant would walk around the apartment holding his penis. Denise, however, did not make either of these allegations at trial.

Having laid the foundation, counsel then went to sidebar:<sup>3</sup>

"Now is the time when I would like to ask [Denise] about [her similar accusations of assault by another household member]

. . . . I made a checklist of the things that she sa[id] [about the other household member] and the things she said today [about the defendant]." Defense counsel then made a detailed offer of proof. He stated, for example, that Denise had stated that the other person had gotten into bed with her and the same sister and rubbed their legs, and that Denise had said to him that they were "going to have a problem" if the person continued. The prosecution objected to the evidence,<sup>4</sup> and the judge excluded it.

---

<sup>3</sup> The judge had already addressed the issue at a motion in limine hearing, and had indicated that he had concerns about allowing the evidence in.

<sup>4</sup> The prosecution argued, among other things, that the evidence was inadmissible under the rape shield statute because it did not fall within the narrow exception to that statute



The judge stated first that he did not view the evidence as targeting "any of the key areas of bases of cross-examination" - - "inconsistent statements, bias, motive, [or] failing of perception" -- and second that he did not believe that the evidence fell within the "limited exceptions to the rape shield statute." The defendant argues that this was error.

3. Commonwealth's closing argument. The defendant also argues that the prosecutor's closing argument was improper. In particular, the defendant principally highlights the prosecutor's argument that the allegations of the two victims were "not recycled accusation[s]," but were "independent accounts of what the defendant did to them." Defense counsel objected to this argument as unfairly taking advantage of the judge's exclusion of the evidence concerning Denise's allegations against the other household member. The judge took no action on the objection.

The jury convicted the defendant of six counts, while acquitting him of others. As to Kathy, the defendant was convicted of one count of assault with intent to rape a child and one count of indecent assault and battery on a child under fourteen. With respect to Denise, the defendant was convicted of one count of assault with intent to rape a child and two

---

applicable where there is proof that the prior accusations were false.

counts of indecent assault and battery on a person over fourteen. The defendant was also convicted of evidence tampering in connection with the destruction of his cell phone.<sup>5</sup> This appeal followed.

Discussion. The critical question presented is one of evidence: did the judge err in excluding the proffered evidence of Denise's prior allegations against a different household member, regarding actions that took place at a different time. Resolution of this question requires consideration of at least three sources of law -- (1) the rape shield statute, G. L. c. 233, § 21B, (2) the established law regarding admission of prior specific instances of conduct ("other acts" evidence), for impeachment of a testifying witness, see, e.g., Commonwealth v. Clifford, 374 Mass. 293, 298 (1978), and (3) the overarching constitutional limitations on the exclusion of evidence, when such exclusion would deprive a criminal defendant of his or her rights to confront and cross-examine witnesses and to present an appropriate defense, see Commonwealth v. Polk, 462 Mass. 23, 37-38 (2012). We consider each of these sources of law in turn, and then as they interrelate to the facts at bar.

---

<sup>5</sup> This conviction resulted from a related Superior Court case that was consolidated in this appeal. The defendant makes no argument concerning that conviction, and his appeal therefrom is waived.

1. The rape shield statute. The rape shield statute,  
G. L. c. 233, § 21B, states in pertinent part:

"Evidence of specific instances of a victim's sexual conduct in . . . [a] . . . proceeding [relating to certain sex offenses] shall not be admissible except evidence of the victim's sexual conduct with the defendant or evidence of recent conduct of the victim alleged to be the cause of any physical feature, characteristic, or condition of the victim; provided, however, that such evidence shall be admissible only after an in camera hearing on a written motion for admission of same and an offer of proof"  
(emphasis added).

The Commonwealth contends that the evidence of Denise's prior allegations was properly excluded under this statute, as it constituted prior "sexual conduct" of Denise, the victim witness. The defense contends, to the contrary, that the statute does not apply, because the evidence at issue merely consists of Denise's prior allegations of sexual assault, and "[a]ccusing someone of sexual assault is not itself 'sexual conduct' under the statute."

We agree that the evidence at issue falls within the protection of the rape shield statute. The evidence concerns specific instances of sexual conduct engaged in by a third party (i.e., not the defendant) but that also involved the victim -- that is, the third party exposed his penis to the victim, and got in bed and rubbed her legs. While it is true that in these examples the victim did not act sexually, we do not agree that the sole purpose of the rape shield statute is to exclude

evidence of prior behavior that might be considered promiscuous. More broadly, another purpose of the statute is to protect victims from being cross-examined and possibly revictimized, by having to revisit prior sexual events. See Commonwealth v. Harris, 443 Mass. 714, 722-723 (2005), quoting State v. Williams, 224 Kan. 468, 470 (1978) (rape-shield statute also "eliminat[es] a common defense strategy of trying the complaining witness rather than the defendant," thereby avoiding "harassment and further humiliation of the victim [and] discouraging victims of rape from reporting the crimes to law enforcement authorities"). Here, where the conduct at issue was plainly sexual, and also plainly involved the victim (though unwillingly), we cannot conclude that it nevertheless does not qualify for protection as the "victim's sexual conduct." No case so holds, and indeed, several prior cases have considered the application of the rape shield statute to evidence that the victim was sexually assaulted, without suggesting that the statute might not apply. See Polk, 462 Mass. at 37-39 (analyzing interplay of defendants' constitutional rights and rape shield statute in connection with evidence of prior sexual assaults of victim); Commonwealth v. Pearce, 427 Mass. 642, 647-648 (1998) (evidence of prior molestation properly excluded under rape shield statute). Cf. Commonwealth v. Parent, 465 Mass. 395, 404-405 (2013) (noting "sexual conduct" undefined in

statute and passing on question whether victim's offer of oral sex constituted "sexual conduct").<sup>6</sup>

2. Other acts evidence. Our analysis does not end, however, with the conclusion that the proffered evidence fell within the rape shield statute. It is well established that "where the rape shield statute is in conflict with a defendant's constitutional right to present evidence that might lead the jury to find that a Commonwealth witness is lying or otherwise unreliable, the statutory prohibition must give way to the constitutional right." Polk, 462 Mass. at 37-38; Commonwealth v. Joyce, 382 Mass. 222, 231 (1981) (rape shield statute overridden by "constitutionally based right of effective cross-examination"). The above statements of law beg the question of how one defines the boundaries of the constitutional right. Before tackling that question, however, we should have in mind the significant body of evidence law regarding the admissibility of "other acts" evidence.

The question whether to admit evidence of a witness's prior conduct that may bear on the reliability of testimony or other issues in a case is hardly new. Courts have grappled with the

---

<sup>6</sup> To the extent the defendant is arguing that the rape shield statute does not apply because the victim was to be asked only about prior statements she made, rather than about what actually happened, we again are not persuaded. The contemplated cross-examination would require the victim to discuss sexual conduct involving herself.

problem for centuries, and there are several sections in the Massachusetts Guide to Evidence that address various aspects of the problem. Evidence of prior conduct includes evidence of a person's reputation (including reputation for truthfulness), and evidence of prior specific instances of conduct ("other acts" or "prior bad acts"). In general, both types of evidence are disfavored, and not admitted. There are many exceptions to the general rules, of course, but the rules themselves are longstanding. See Commonwealth v. Bonds, 445 Mass. 821, 829 (2006) ("[a]s a general rule, evidence of a person's character is not admissible" [citation omitted]). See also Commonwealth v. Libran, 405 Mass. 634, 640 (1989) ("Evidence of prior misconduct is not generally admissible to prove bad character or a propensity to commit crimes").

The reasons for these rules have been well stated elsewhere. Reputation evidence has limited probative value -- it "might erroneously lead a jury to conclude a person acted in a particular way simply because his character suggests that he would." Bonds, 445 Mass. at 829. This same concern applies to evidence of prior specific instances of conduct, whether it is prior conduct of a criminal defendant or of an important witness such as a victim. See Commonwealth v. Jackson, 132 Mass. 16, 20-21 (1882). Indeed, even before the rape shield statute the common law generally barred evidence of specific instances of a

victim's prior sexual conduct, in part because of its "limited probative value." See Joyce, 382 Mass. at 227. See also Commonwealth v. Domaingue, 397 Mass. 693, 698 (1986) ("The section of the rape-shield statute . . . which bars the admission of evidence of specific instances of sexual conduct of the victim, is essentially a reflection of the preexisting common law rule"). Moreover, in addition to concerns about relevance, other acts evidence tends to prolong the trial and to confuse the issues by "divert[ing] the attention of the jury from the [issue] immediately before it" and onto collateral matters. See Jackson, supra at 20. See also Commonwealth v. Fontes, 396 Mass. 733, 736-737 (1986) (acknowledging that "admission of evidence of specific acts of [the victim]" has potential to "extend[] [the trial] unreasonably by consideration of collateral points," but that "[t]rial judges can control undue investigation of collateral matters").

Importantly, although there are several circumstances under which prior specific instances of conduct may be admitted (often with limitations as to purpose), in that context judges have considerable discretion in deciding admissibility. See Commonwealth v. Veiovis, 477 Mass. 472, 481-482 (2017). Such evidence must always be relevant, Commonwealth v. Helfant, 398 Mass. 214, 225 (1986) -- a determination "entrusted to the trial judge's broad discretion." Commonwealth v. Simpson, 434 Mass.

570, 579 (2001). And since evidence of prior specific instances of conduct is collateral to the issues being tried and carries the potential for undue prejudice, judges can always intervene "to prevent the danger of overwhelming a case with" it (quotation and citation omitted). Commonwealth v. White, 475 Mass. 724, 744 (2016). We give deference to these discretionary decisions and will not reverse absent an error of law or clear error of judgment. See Veiovis, 477 Mass. at 482.

3. The defendant's constitutional rights. The defendant's principal contention -- in the face of the rape shield law and the general disfavor of evidence of "other acts" -- is that he had a constitutional right to cross-examine the victim about her prior allegations. There is indeed a constitutional right to cross-examine -- the Supreme Judicial Court has described it more broadly as a "right to present evidence that might lead the jury to find that a Commonwealth witness is lying or otherwise unreliable." Polk, 462 Mass. at 38. Where it applies, this constitutional right supersedes the rape shield statute and requires that the defendant's proffered evidence be admitted. See id. at 37-38. The right is "not absolute," of course. See Commonwealth v. Walker, 438 Mass. 246, 253 (2002). A criminal defendant is not entitled to pursue whatever cross-examination he or she chooses. See id. (judges have "broad discretion to determine the scope and extent of cross-examination"). The



rules regarding relevance, undue prejudice, and unnecessary confusion are not suspended for a criminal defendant. See Delaware v. Van Arsdall, 475 U.S. 673, 679 (1986) ("insofar as the Confrontation Clause is concerned" judges may "impose reasonable limits on . . . cross-examination based on concerns about . . . harassment, prejudice, confusion of the issues, . . . or interrogation that is . . . only marginally relevant").

The constitutional right at issue derives from both the confrontation clause and the due process clause and concomitant principles of our own Declaration of Rights. See Commonwealth v. Bui, 419 Mass. 392, 400, cert. denied, 516 U.S. 861 (1995) (right "is well established in the common law, in the United States Constitution [Sixth Amendment], and in the Constitution of the Commonwealth [art. 12 of the Declaration of Rights]"). The scope of the right is not easily defined, as each case requires an evaluation of the importance and probative value of the evidence the defendant seeks to introduce. In one of the early United States Supreme Court cases on this topic, for example, the defendant had been prevented from cross-examining the government's key identification witness about the fact that the witness was then on probation for a relevant crime that he had committed as a juvenile. Davis v. Alaska, 415 U.S. 308, 314 (1974). The defendant's theory was that this evidence "suggest[ed] that [the witness] was biased" -- that is, it

supported "an inference of undue pressure [by the police] because of [the witness]'s vulnerable status as a probationer . . . [and his] possible concern that he might be a suspect." Id. at 318-319. The Court concluded that exclusion of this cross-examination violated the defendant's right of confrontation, because the evidence could have "[s]erious[ly] damage[d] . . . the strength of the State's case," id. at 319, which was highly dependent on "[t]he accuracy and truthfulness of [the witness]'s testimony," id. at 317.

Several decisions of the Supreme Judicial Court have applied this constitutional right in the context of defense efforts to examine victims in sexual assault trials, sometimes holding that the defendant was entitled to adduce the proffered evidence, and sometimes not.<sup>7</sup> Of these cases, the most recent is Polk, supra. There, the defendant was charged with sexually

---

<sup>7</sup> Thus, in Joyce, supra, evidence that the victim had been previously charged with prostitution was admissible to show that the victim was biased and "motivated falsely to accuse the defendant of rape by a desire to avoid further prosecution." 382 Mass. at 230. Later, in Harris, supra, the Supreme Judicial Court held that evidence of the complainant's prior conviction of being a "common nightwalker" should not have been categorically excluded under the rape shield statute where "evidence of the complaining witness's sexual conduct [may be] relevant to the complainant's bias or motive to fabricate." 443 Mass. at 721. Other cases have held that efforts to cross-examine a victim were properly prohibited. See, e.g., Pearce, 427 Mass. at 647-648 (judge acted within "sound discretion" in excluding evidence that the victim had been molested previously).

assaulting his fifteen year old adoptive niece, who had previously made statements accusing her biological uncles of sexual abuse. 462 Mass. at 24, 27. In that context the defendant sought to introduce "evidence of [the victim's] [prior] sexual abuse," and her "inconsistent memory" of it, id. at 37, 38, "to demonstrate the significant possibility that [the victim] . . . confabulated her memory of" that prior abuse with "the defendant's alleged sexual assaults," id. at 38.

The trial judge excluded the evidence, and on appeal the Supreme Judicial Court reversed, holding that "[b]ecause such evidence, if credited, would [have] materially affect[ed] the jury's evaluation of [the victim's] credibility and reliability, and because it was not cumulative of other admitted evidence, . . . the defendant was constitutionally entitled to present" it. Id. at 38-39.

The defendant argues that Polk controls here, but although the case is indeed a close one, we do not agree. First, Polk is distinguishable on its facts. In Polk the proffered evidence was offered to show that the victim may have "suffered from dissociative memory," and so was "confusing the source of the abuse" and "inferring facts to fill in the blanks of her memory" so as to accuse the defendant. Id. at 38. In other words, the evidence undercut the victim's reliability with respect to her identification of the defendant as her abuser. See id. The

defendant's theory here, however, is not one of confabulation or mistaken identification, but rather that Denise's prior abuse helped her to fabricate the allegations against the defendant and provided her with knowledge that her allegations could result in the defendant being removed from her home. The theory thus required the jury to follow, and to accept, additional logical steps beyond those in Polk.

Second, we in any event are not persuaded that the constitutional standard has been met here -- whether the defendant's "evidence, if credited, would materially affect the jury's evaluation of [the witness's] credibility and reliability." Id. at 38-39. The evidence is of "specific instances" of conduct -- allegations made by Denise about sexual conduct involving a different person at a different time. While the defendant urges that the evidence is nevertheless probative because (in his view) it supports a conclusion of fabrication, the evidence is not as unique or compelling as the defendant suggests. In this case Denise testified to numerous assaults by the defendant, but only a few of her allegations mirrored her prior allegations against the other perpetrator. The bulk of Denise's allegations were unique to this defendant. Moreover, the defendant does not argue that the prior allegations were

false,<sup>8</sup> and thus this case does not fall within the rule of Commonwealth v. Bohannon, 376 Mass. 90 (1978), S.C., 385 Mass. 733 (1982), which has been applied to hold that prior false allegations of sexual conduct were not excluded by the rape shield statute. See Commonwealth v. Nichols, 37 Mass. App. Ct. 332, 336-337 (1994). In short, the inference the defendant wished to argue from Denise's prior allegations -- to the effect that the coincidence with her prior allegations made her later allegations incredible -- was quite attenuated.

At bottom, we are not persuaded that there was a constitutional violation here -- or put differently, we are not persuaded that the defendant had a constitutional right to cross-examine the victim regarding her prior, other act allegations involving a third party that are not alleged to have been false. We acknowledge that such a conclusion is highly fact dependent, and difficult to capture in a standard such as the court employed in Polk. See 462 Mass. at 38-39. Nevertheless, as discussed above trial courts have historically had significant discretion to exclude "other act" evidence because of its generally lesser probative value and its

---

<sup>8</sup> The defendant expressly disclaims any argument that Denise's prior allegations were false. We note, however, that had the evidence been allowed the defendant may well have hoped that the jury would indulge such an inference on its own. For this reason, we think that the evidence at issue raises concerns similar to those implicated by "prior bad act" evidence.

potential to confuse and distract. That discretion is augmented by the rape shield statute and the concerns underlying it. See Harris, 443 Mass. at 728 (discretion informed by "the policies to be promoted by the rape-shield statute"). The constitutional rights at issue do not substantially alter such longstanding evidentiary considerations. See id. at 721 ("even when offered to show bias or motive to lie, the judge should exercise discretion with respect to the introduction of" evidence of prior sexual conduct).

Finally, we note that the traditional concerns with "other act" evidence are present in this case, and reinforce our conclusion that the judge's exercise of discretion should not be overturned. As noted, the probative value of the proffered testimony is certainly debatable. Moreover, the defendant's evidence of prior allegations brings with it the other common concerns with such evidence: how will the prior acts be proved, and how far afield will the parties be allowed to go in proving it? See Joyce, 382 Mass. at 227 ("collateral questions relating to the specific [sexual conduct] would prolong the trial and divert the attention of the trier of fact from the alleged criminal acts of the defendant"). See also Harris, 443 Mass. at 727 & n.12. The defendant seems to assume that he could have introduced all the evidence of the victim's prior allegations through cross-examination of the victim. Suppose, however, that

the Commonwealth had then sought to rebut any inference that the victim's prior allegations were false, by introducing that the other perpetrator had been tried, and convicted, of sexual assault? The result could have been a confusing and time-consuming detour into a different case, not before this jury. These are the valid concerns that a trial judge must address when confronted with other act evidence, and it is for good reason that we generally defer to the judge's discretion in weighing such concerns. Here we find no abuse of discretion in the exclusion of the evidence, nor do we think its admission compelled by either the Federal or Massachusetts Constitution.

4. Closing argument. We also do not agree with the defendant's argument that the prosecutor's closing improperly exploited the excluded evidence of Denise's prior allegations against another individual. In closing, defense counsel argued, in essence, that Denise's allegations were borrowed from information relayed to her by Kathy. The prosecutor argued in response that the two victims did "not recycle[] accusation[s]" from one another, but instead provided "independent accounts of what the defendant did to them" by "describ[ing] their different experiences." In context, the prosecutor's statement did not speak to Denise's prior allegations against a third party, but rather addressed the defendant's argument that Denise's allegations were recycled from Kathy -- a theory that the

defendant was allowed to and in fact did explore. There was therefore no error because the prosecutor did not "exploit the absence of evidence that was excluded at his or her request."

See Commonwealth v. Lopez, 474 Mass. 690, 699-700 (2016).<sup>9</sup>

Judgments affirmed.

---

<sup>9</sup> The defendant also argues that he should be granted a new trial because Kathy's grandmother referred to the defendant as a "rapist" during her testimony. There was no objection or motion to strike, and so we review for a substantial risk of a miscarriage of justice. See Commonwealth v. Alphas, 430 Mass. 8, 13 (1999). In so doing, we ask whether "we are persuaded that [the error] did not 'materially influence[]' the guilty verdict," and consider, among other things, whether it can be inferred from the record that the failure to object was the result of a reasonable tactical decision of counsel. Id. At trial, the defendant had pressed the argument that Kathy's grandmother had caused Kathy to fabricate her allegations. Indeed, the references that the defendant complains of came during the grandmother's cross-examination, when the defendant was exploring this theory. We therefore are persuaded that, although likely objectionable, the grandmother's characterizations did not create a substantial risk of a miscarriage of justice. See Commonwealth v. Bynoe, 49 Mass. App. Ct. 687, 694-695 (2000) (no substantial risk of a miscarriage of justice where defendant "had something to gain" by not objecting).



APPEALS COURT  
Full Court Panel Case  
Case Docket

COMMONWEALTH vs. EDEN C. JACQUES  
THIS CASE CONTAINS IMPOUNDED MATERIAL OR PID  
2020-P-1100

## CASE HEADER

Case Status	Decided: Full Opinion
Status Date	01/17/2023
Nature	Crime: Sexual Offense
Entry Date	09/30/2020
Appellant	Defendant
Case Type	Criminal
Brief Status	
Brief Due	
Arg/Submitted	10/06/2022
Decision Date	01/17/2023
Panel	Green, C.J., Henry, Englander, JJ.
Citation	102 Mass. App. Ct. 157
Lower Court	Suffolk Superior Court
TC Number	
Lower Ct Judge	Debra A. Squires-Lee, J.
TC Entry Date	11/07/2017
SJ Number	
FAR Number	<a href="#">FAR-29191</a>
SJC Number	

## ADDITIONAL INFORMATION

Consolidated with: 20-P-1099

## INVOLVED PARTY

Commonwealth  
Plaintiff/Appellee  
Red brief & appendix filed  
3 Enls, 121 Days

Eden C. Jacques  
Defendant/Appellant  
Stay vacated  
Blue br, app & reply br filed  
2 Enls, 98 Days

## ATTORNEY APPEARANCE

[Cailin M. Campbell, A.D.A.](#) - Withdrawn  
[Andrew S. Doherty, A.D.A.](#)  
[David D. McGowan, A.D.A.](#)

[David Rassoul Rangaviz, Esquire](#) - Withdrawn  
[William A. Korman, Esquire](#) - Withdrawn  
[Dorothy A. Mele, CPCS assignment supervisor](#) - Inactive  
[Joshua M. Daniels, Esquire](#)

## ORAL ARGUMENTS



0:00 / 0:00



## DOCKET ENTRIES

Entry Date	Paper	Entry Text
11/12/2020		Case partially impounded pursuant to M.G.L. c. 265, 24C
11/03/2021		ADDITIONAL Transcript Volume: 11/12/19 - Motions in Limine
11/03/2021		ADDITIONAL Transcript Volume: 11/22/19 - Jury Trial.
11/03/2021		ADDITIONAL Transcript Volume: 11/26/19 - Sentence Imposition.
09/30/2020		Transcript Volume: 11/13/2019 - Trial .
09/30/2020		Transcript Volume: 11/14/2019 - Trial .
09/30/2020		Transcript Volume: 11/18/2019 - Trial .
09/30/2020		Transcript Volume: 11/19/2019 - Trial .

09/30/2020	Transcript Volume: 11/20/2019 - Trial .
09/30/2020	Transcript Volume: 11/21/2019 - Trial .
09/30/2020 #1	Lower Court Assembly of the Record Package
09/30/2020 #2	Notice of entry sent.
10/02/2020 #3	Notice of appearance filed for Eden C. Jacques by Attorney William Korman.
10/06/2020	ORDER: The appeals in 20P1099 and 20P1100 are hereby consolidated. The appeal in 20P1099 is closed and all future filings shall relate to 20P1100 only. Appellant's brief and record appendix in the consolidated appeal are due on or before 11/09/2020. *Notice/attest
10/06/2020	Copy of Assembly of the Record (Transferred from 2020-P-1099) received from Suffolk Superior Court.
10/06/2020 #4	MOTION to withdraw as counsel filed for Eden C. Jacques by Attorney David Rangaviz.
10/08/2020	RE#4: Allowed. Attorney David Rangaviz is withdrawn. *Notice
11/12/2020 #5	Docketing Statement filed for Eden C. Jacques by Attorney William Korman.
11/12/2020 #6	MOTION of Appellant to stay appellate proceedings filed for Eden C. Jacques by Attorney William Korman.
11/13/2020	RE#6: Allowed. Leave is given to the appellant to file and the trial court to consider a motion for new trial. Appellate proceedings stayed to 1/12/2021. Status report due then regarding the status of the motion for new trial. Notice/attest
01/19/2021	Notice preceding dismissal. *Notice.
02/01/2021 #7	Status Report filed for Eden C. Jacques by Attorney William Korman.
02/02/2021	RE#7: Appellate proceedings stayed to 3/12/2021. Status report due then regarding the status of the motion for new trial. Notice
03/10/2021 #8	MOTION to withdraw as counsel filed for Eden C. Jacques by Attorney William Korman.
03/12/2021	RE#8: Allowed. Attorney Korman is withdrawn. CPCS is to appoint successor counsel. Appellate proceedings STAYED to 4/12/21. Successor counsel is to file status report on or before 4/12/21, along with counsel's Notice of Appearance. *Notice
04/08/2021 #9	Notice of appearance filed for Eden C. Jacques by Attorney Joshua Daniels.
04/08/2021 #10	Status Report filed for Eden C. Jacques by Attorney Joshua Daniels.
04/08/2021	RE#10: Appellate proceedings stayed to 05/12/2021. Status report due then as to whether recently-assigned successor counsel is ready to proceed with this appeal. *Notice.
05/12/2021 #11	Status Report filed for Eden C. Jacques by Attorney Joshua Daniels.
05/13/2021	RE#11: Appellate proceedings stayed to 6/14/21. Status report due then indicating whether a motion for new trial will be pursued. *Notice.
06/14/2021 #12	Status Report filed for Eden C. Jacques by Attorney Joshua Daniels.
06/15/2021	RE#12: Appellate proceedings stayed to 8/16/21. Status report due then concerning additional progress made since the date of the last status report in finalizing motion for new trial for consideration by the trial court. Notice/attest
08/16/2021 #13	Status Report filed for Eden C. Jacques by Attorney Joshua Daniels.
08/17/2021	RE#13: Appellate proceedings stayed to 10/15/21. Status report due then concerning outcome of investigation and completion of motion for new trial. Notice
10/15/2021 #14	Status Report filed for Eden C. Jacques by Attorney Joshua Daniels.
10/18/2021	RE#14: The stay of appellate proceedings is vacated. Appellant's brief and record appendix are due on or before 11/22/21. *notice
11/03/2021 #15	Motion for additional or corrected transcripts (IMPOUNDED) filed for Eden C. Jacques by Attorney Joshua Daniels.
11/04/2021	RE#15: Notwithstanding that pursuant to M.R.A.P. 9(e), transcripts in a criminal case must be forwarded to this court from the trial court as part of the assembly of record, the motion is allowed and the transcripts are accepted for filing. The appellant shall confirm that these transcripts have been filed with the trial court and if not, shall file these transcripts with the trial court who maintains a copy for the record. * Notice/attest
11/08/2021 #16	Motion of Appellant to extend date for filing brief and appendix filed for Eden C. Jacques by Attorney Joshua Daniels.
11/09/2021	RE#16: Allowed to 01/21/2022. Notice sent.
01/14/2022 #17	Appellant brief filed for Eden C. Jacques by Attorney Joshua Daniels.
01/14/2022 #18	Appendix filed for Eden C. Jacques by Attorney Joshua Daniels.
01/14/2022 #19	Appendix (UNREDACTED) (IMPOUNDED) filed for Eden C. Jacques by Attorney Joshua Daniels.
01/14/2022 #20	Motion For Leave to File Unredacted RA (IMPOUNDED) filed for Eden C. Jacques by Attorney Joshua Daniels.
01/18/2022	RE#20: Referred to the panel designated to decide this appeal. *Notice
01/31/2022 #21	Notice of appearance filed for Commonwealth by Attorney Andrew Doherty.



01/31/2022	#22	MOTION of Appellee to extend brief due date filed for Commonwealth by Attorney Andrew Doherty.
01/31/2022	#23	Corrected Notice of appearance filed for Commonwealth by Attorney Andrew Doherty.
01/31/2022	#24	Corrected MOTION of Appellee to extend brief due date filed for Commonwealth by Attorney Andrew Doherty.
02/01/2022		RE#24: Allowed to 04/14/2022. Notice sent.
02/01/2022		RE#22: See order on #24. *Notice.
03/18/2022	#25	Letter RE: mistake in Opening Brief filed for Eden C. Jacques by Attorney Joshua Daniels.
03/21/2022		RE#25: Defendant is given leave to file a corrected brief on or before 3/25/22. *Notice.
03/21/2022	#26	Corrected Appellant brief filed for Eden C. Jacques by Attorney Joshua Daniels.
04/14/2022	#27	MOTION of Appellee to extend brief due date filed for Commonwealth by Attorney Andrew Doherty.
04/14/2022		RE#27: Allowed to 05/16/2022. Notice sent.
05/16/2022	#28	MOTION of Appellee to extend brief due date filed for Commonwealth by Attorney Andrew Doherty.
05/16/2022	#29	RESPONSE to paper #28 filed for Eden C. Jacques by Attorney Joshua Daniels.
05/17/2022		RE#28: Allowed to 6/16/22. No further enlargement should be anticipated. Notice sent.
06/17/2022	#30	Appellee brief filed for Commonwealth by Attorney Andrew Doherty.
06/17/2022	#31	Appendix (Supplemental) filed for Commonwealth by Attorney Andrew Doherty.
06/17/2022	#32	MOTION of Appellee to extend brief due date filed for Commonwealth by Attorney Andrew Doherty.
06/22/2022		RE#32: Allowed and accepted for filing. Notice
06/22/2022	#33	Motion of Appellant to extend date for filing Reply Brief filed for Eden C. Jacques by Attorney Joshua Daniels.
06/27/2022		RE#33: Allowed to 08/05/2022. *Notice.
08/05/2022	#34	Reply brief filed for Eden C. Jacques by Attorney Joshua Daniels.
08/08/2022		Notice sent seeking information on unavailability for oral argument in October 2022
08/09/2022	#35	Response from Joshua M. Daniels, Esquire re: unavailable for oral argument October 3, 4.
08/31/2022	#36	Notice of 10/06/2022, 9:30 AM argument at University of Massachusetts - Dartmouth sent.
09/01/2022		Response from Andrew S. Doherty, A.D.A. re: will appear and argue on 10/06/2022.
09/01/2022		Response from Joshua M. Daniels, Esquire re: will appear and argue on 10/06/2022.
09/15/2022		ORDER: It has come to the court's attention that pages 2-46 of the Supplemental Appendix are not searchable using optical character recognition (OCR); SJC Rule 1:25, Rule 9(a). The Commonwealth shall electronically re-file the Supplemental Appendix containing fully searchable pages, or a letter stating that no better copy exists on, or before 09/26/2022. The clearly marked revised supplemental appendix or letter can be submitted using the Appendix filing code on efilema.com. *Notice
09/26/2022	#37	Appendix (Revised Supplemental) filed for Commonwealth by Attorney Andrew Doherty.
10/06/2022		Oral argument held. (Green, C.J., Henry, J., Englander, J).
10/11/2022	#38	Letter pursuant to MRAP 16(l) filed for Eden C. Jacques by Attorney Joshua Daniels.
01/17/2023		RE#20: Allowed. (Green, C.J., Henry, J., Englander, J). *Notice.
01/17/2023	#39	Decision: Full Opinion (Englander, J). Judgments affirmed. *Notice.
01/19/2023		FAR-29191 opened on MOTION to file FAR application late filed by Eden C Jacques.

As of 02/02/2023 8:15am

**1684CR00862 Commonwealth vs. Jacques, Eden Chavelle**

- Case Type:
- Indictment
- Case Status:
- Open
- File Date
- 11/15/2016
- DCM Track:
- C - Most Complex
- Initiating Action:
- ASSAULT TO RAPE CHILD c265 §24B
- Status Date:
- 11/16/2016
- Case Judge:
- Ullmann, Hon. Robert L.
- Next Event:
- 

[All Information](#) [Party](#) [Charge](#) [Event](#) [Tickler](#) [Docket](#) [Disposition](#)

**Party Information****Suffolk County District Attorney**

- Prosecutor

Alias

**Party Attorney**

- Attorney
- Campbell, Esq., Callin
- Bar Code
- 676342
- Address
- Suffolk County District Attorney's Office
- 1 Bulfinch Place
- Third Floor
- Boston, MA 02114
- Phone Number
- (617)619-4070
- Attorney
- Siconolfi, Esq., Kyle E
- Bar Code
- 694271
- Address
- Suffolk County DA's Office
- One Bulfinch Place
- Boston, MA 02114
- Phone Number
- (617)619-4000

[More Party Information](#)**Jacques, Eden Chavelle**

- Defendant

Alias

**Party Attorney**

- Attorney
- Daniels, Esq., Joshua M
- Bar Code
- 673034
- Address
- Law Office of Joshua M. Daniels
- PO Box 300765
- Jamaica Plain, MA 02130
- Phone Number
- (617)942-2190

- Attorney
- Korman, Esq., William
- Bar Code
- 632228
- Address
- Rudolph Friedmann, LLP
- 92 State St 4th Floor
- Boston, MA 02109
- Phone Number
- (617)723-7700
- Attorney
- Rangaviz, Esq., David Rassoul
- Bar Code
- 681430
- Address
- Committee for Public Counsel Services
- 75 Federal St
- 6th Floor
- Boston, MA 02110
- Phone Number
- (617)482-6212
- Attorney
- Tennen, Esq., Eric Brian
- Bar Code
- 650542
- Address
- Swomley and Tennen, LLP
- 50 Congress St
- Suite 600
- Boston, MA 02109
- Phone Number
- (617)227-9443

[More Party Information](#)
**Department of Children and Families**

- Keeper of Record

Alias

Party Attorney

[More Party Information](#)
**Codman Square Health Center**

- Keeper of Record

Alias

Party Attorney

[More Party Information](#)
**Party Charge Information**

- Jacques, Eden Chavelle

- Defendant

**Charge # 1:**

265/24B/A-1 - Felony ASSAULT TO RAPE CHILD c265 §24B

- Original Charge
  - 265/24B/A-1 ASSAULT TO RAPE CHILD c265 §24B (Felony)
  - Indicted Charge
  - 
  - Amended Charge
  -

**Charge Disposition**

Disposition Date

Disposition

11/25/2019

Guilty Verdict

- Jacques, Eden Chavelle

- Defendant

**Charge # 2:**

265/23A/A-1 - Felony RAPE OF CHILD, AGGRAVATED, FIVE YEAR AGE DIFFERENCE c265 §23A

- Original Charge
  - 265/23A/A-1 RAPE OF CHILD, AGGRAVATED, FIVE YEAR AGE DIFFERENCE c265 §23A (Felony)
  - Indicted Charge
  - 
  - Amended Charge
  -

**Charge Disposition**

Disposition Date  
Disposition  
11/22/2019  
Guilty Verdict - Lesser Included

- **Jacques, Eden Chavelle**

- - Defendant

**Charge # 3:**

**265/23A/A-1 - Felony** RAPE OF CHILD, AGGRAVATED, FIVE YEAR AGE DIFFERENCE c265 §23A

- Original Charge
  - 265/23A/A-1 RAPE OF CHILD, AGGRAVATED, FIVE YEAR AGE DIFFERENCE c265 §23A (Felony)
  - Indicted Charge
  - 
  - Amended Charge
  -

**Charge Disposition**

Disposition Date  
Disposition  
11/20/2019  
Dismissed

- **Jacques, Eden Chavelle**

- - Defendant

**Charge # 4:**

**265/13B/A-5 - Felony** INDECENT A&B ON CHILD UNDER 14 c265 §13B

- Original Charge
  - 265/13B/A-5 INDECENT A&B ON CHILD UNDER 14 c265 §13B (Felony)
  - Indicted Charge
  - 
  - Amended Charge
  -

**Charge Disposition**

Disposition Date  
Disposition  
11/20/2019  
Dismissed

- **Jacques, Eden Chavelle**

- - Defendant

**Charge # 5:**

**265/13B/A-5 - Felony** INDECENT A&B ON CHILD UNDER 14 c265 §13B

- Original Charge
  - 265/13B/A-5 INDECENT A&B ON CHILD UNDER 14 c265 §13B (Felony)
  - Indicted Charge
  - 
  - Amended Charge
  -

**Charge Disposition**

Disposition Date  
Disposition  
11/18/2019  
Nolle Prosequi

- **Jacques, Eden Chavelle**

- - Defendant

**Charge # 6:**

**265/23A/A-1 - Felony** RAPE OF CHILD, AGGRAVATED, FIVE YEAR AGE DIFFERENCE c265 §23A

- Original Charge
  - 265/23A/A-1 RAPE OF CHILD, AGGRAVATED, FIVE YEAR AGE DIFFERENCE c265 §23A (Felony)



- Indicted Charge

- 
- Amended Charge

**Charge Disposition**

Disposition Date

Disposition

11/25/2019

Not Guilty Verdict

- Jacques, Eden Chavelle

- - Defendant

**Charge # 7:****265/24B/A-1 - Felony** ASSAULT TO RAPE CHILD c265 §24B

- Original Charge

- 265/24B/A-1 ASSAULT TO RAPE CHILD c265 §24B (Felony)

- Indicted Charge

- 
- Amended Charge

**Charge Disposition**

Disposition Date

Disposition

11/22/2019

Not Guilty Verdict

- Jacques, Eden Chavelle

- - Defendant

**Charge # 8:****265/24B/A-1 - Felony** ASSAULT TO RAPE CHILD c265 §24B

- Original Charge

- 265/24B/A-1 ASSAULT TO RAPE CHILD c265 §24B (Felony)

- Indicted Charge

- 
- Amended Charge

**Charge Disposition**

Disposition Date

Disposition

11/25/2019

Guilty Verdict

- Jacques, Eden Chavelle

- - Defendant

**Charge # 9:****265/13H-2 - Felony** INDECENT A&B ON PERSON 14 OR OVER c265 §13H

- Original Charge

- 265/13H-2 INDECENT A&B ON PERSON 14 OR OVER c265 §13H (Felony)

- Indicted Charge

- 
- Amended Charge

**Charge Disposition**

Disposition Date

Disposition

11/25/2019

Guilty Verdict

- Jacques, Eden Chavelle

- - Defendant

**Charge # 10:****265/13H-2 - Felony** INDECENT A&B ON PERSON 14 OR OVER c265 §13H

- Original Charge

- 265/13H-2 INDECENT A&B ON PERSON 14 OR OVER c265 §13H (Felony)

- Indicted Charge

- 
- Amended Charge

**Charge Disposition**

Disposition Date  
Disposition  
11/20/2019  
Dismissed

• **Jacques, Eden Chavelle**

• - Defendant

**Charge # 11:**

**265/13H-2 - Felony** INDECENT A&B ON PERSON 14 OR OVER c265 §13H

## • Original Charge

◦ 265/13H-2 INDECENT A&amp;B ON PERSON 14 OR OVER c265 §13H (Felony)

◦ Indicted Charge

◦

◦ Amended Charge

◦

**Charge Disposition**

Disposition Date  
Disposition  
11/25/2019  
Guilty Verdict

• **Jacques, Eden Chavelle**

• - Defendant

**Charge # 12:**

**265/13B/A-5 - Felony** INDECENT A&B ON CHILD UNDER 14 c265 §13B

## • Original Charge

◦ 265/13B/A-5 INDECENT A&amp;B ON CHILD UNDER 14 c265 §13B (Felony)

◦ Indicted Charge

◦

◦ Amended Charge

◦

**Charge Disposition**

Disposition Date  
Disposition  
11/22/2019  
Not Guilty Verdict

• **Jacques, Eden Chavelle**

• - Defendant

**Charge # 13:**

**272/29A/A-1 - Felony** CHILD IN NUDE, LASCIVIOUS POSE/EXHIBIT c272 §29A(a)

## • Original Charge

◦ 272/29A/A-1 CHILD IN NUDE, LASCIVIOUS POSE/EXHIBIT c272 §29A(a)  
(Felony)

◦ Indicted Charge

◦

◦ Amended Charge

◦

**Charge Disposition**

Disposition Date  
Disposition  
11/22/2019  
Not Guilty Verdict

• **Jacques, Eden Chavelle**

• - Defendant

**Charge # 14:**

**265/13H-2 - Felony** INDECENT A&B ON PERSON 14 OR OVER c265 §13H

## • Original Charge

◦ 265/13H-2 INDECENT A&amp;B ON PERSON 14 OR OVER c265 §13H (Felony)

◦ Indicted Charge

◦

◦ Amended Charge

◦

**Charge Disposition**

Disposition Date  
Disposition  
11/18/2019



Nolle Prosequi

- **Jacques, Eden Chavelle**

- Defendant

- **Charge # 15:**

- 268/13B/A-4 - Felony      WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B

- Original Charge

- 268/13B/A-4 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B (Felony)

- Indicted Charge

- 

- Amended Charge

- 

**Charge Disposition**

Disposition Date

Disposition

12/06/2017

Nolle Prosequi

**Events**

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
11/16/2016 09:30 AM	Magistrate's Session	BOS-7th FL, CR 705 (SC)	Arraignment	Curley, Edward J	Held as Scheduled
12/20/2016 09:30 AM	Magistrate's Session	BOS-7th FL, CR 705 (SC)	Pre-Trial Conference	Curley, Edward J	
12/20/2016 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Bail Hearing	Miller, Hon. Rosalind H	Not Held
01/04/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Bail Hearing		Held as Scheduled
01/26/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Tochka, Hon. Robert N	Held as Scheduled
02/08/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Tochka, Hon. Robert N	Held as Scheduled
02/23/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Tochka, Hon. Robert N	Held as Scheduled
03/02/2017 02:30 PM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Tochka, Hon. Robert N	Held as Scheduled
04/04/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status		Held as Scheduled
04/27/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status	Cannone, Hon. Beverly J	Held as Scheduled
05/16/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status	Cannone, Hon. Beverly J	Not Held
05/18/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Pre-Trial Hearing		Not Held
06/15/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Pre-Trial Hearing	Cannone, Hon. Beverly J	Not Held
07/11/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status	Sullivan, Hon. William F	Not Held
08/08/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Sullivan, Hon. William F	Held as Scheduled
08/10/2017 02:30 PM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Sullivan, Hon. William F	Held as Scheduled
08/28/2017 02:00 PM	Criminal 2	BOS-8th FL, CR 806 (SC)	Final Pre-Trial Conference	Miller, Hon. Rosalind H	Rescheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
08/28/2017 02:00 PM	Criminal 1	BOS-7th FL, CR 704 (SC)	Bail Review via Video Conference	Sullivan, Hon. William F	Held as Scheduled
09/18/2017 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial	Miller, Hon. Rosalind H	Rescheduled
09/21/2017 02:00 PM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status	Sullivan, Hon. William F	Held as Scheduled
10/02/2017 02:00 PM	Criminal 2	BOS-8th FL, CR 806 (SC)	Final Pre-Trial Conference		Rescheduled
10/24/2017 02:00 PM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status	Miller, Hon. Rosalind H	Held as Scheduled
10/30/2017 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial		Rescheduled
11/01/2017 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Hearing to Show/Probable Cause	Miller, Hon. Rosalind H	Held as Scheduled
11/13/2017 02:00 PM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Miller, Hon. Rosalind H	Held as Scheduled
11/13/2017 02:00 PM	Criminal 2	BOS-8th FL, CR 806 (SC)	Final Pre-Trial Conference		Canceled
11/29/2017 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial		Canceled
12/06/2017 02:30 PM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Miller, Hon. Rosalind H	Held as Scheduled
01/04/2018 09:30 AM	Magistrate's Session	BOS-7th FL, CR 705 (SC)	Filing of Motions	Medeiros, Lisa B	Not Held
01/23/2018 09:30 AM	Magistrate's Session	BOS-7th FL, CR 705 (SC)	Filing of Motions	Medeiros, Lisa B	Not Held
02/08/2018 09:30 AM	Criminal 1		Conference to Review Status	Tochka, Hon. Robert N	
02/15/2018 09:30 AM	Criminal 1		Conference to Review Status	Tochka, Hon. Robert N	Not Held
03/12/2018 09:30 AM	Criminal 1		Conference to Review Status	Tochka, Hon. Robert N	Held as Scheduled
04/09/2018 02:00 PM	Criminal 1		Bail Review via Video Conference	Cannone, Hon. Beverly J	Held as Scheduled
04/23/2018 02:00 PM	Criminal 2		Final Pre-Trial Conference		Not Held
05/07/2018 09:30 AM	Criminal 1		Conference to Review Status	Cannone, Hon. Beverly J	Held as Scheduled
05/14/2018 09:00 AM	Criminal 2		Jury Trial		Canceled
05/21/2018 02:00 PM	Criminal 2		Conference to Review Status	Muse, Hon. Christopher J	Canceled
07/11/2018 09:30 AM	Criminal 1		Conference to Review Status	Cannone, Hon. Beverly J	Held as Scheduled
08/20/2018 09:30 AM	Criminal 1		Filing of Motions	Sullivan, Hon. William F	Held as Scheduled
09/13/2018 09:30 AM	Criminal 1		Motion Hearing	Sullivan, Hon. William F	Held as Scheduled
10/01/2018 09:30 AM	Criminal 1		Pre-Trial Hearing		Held as Scheduled
11/21/2018 09:00 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Evidentiary Hearing on Suppression		Rescheduled



<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
11/21/2018 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Hearing for Appearance / Appointment of Counsel	Miller, Hon. Rosalind H	Held as Scheduled
11/26/2018 02:00 PM	Criminal 2		Final Pre-Trial Conference		Canceled
12/03/2018 09:00 AM	Criminal 2		Jury Trial		Canceled
12/03/2018 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status	Miller, Hon. Rosalind H	Held as Scheduled
12/27/2018 09:30 AM	Criminal 1		Conference to Review Status	Miller, Hon. Rosalind H	Held as Scheduled
02/06/2019 09:30 AM	Criminal 1		Hearing for Appearance / Appointment of Counsel	Tochka, Hon. Robert N	Held as Scheduled
02/21/2019 09:30 AM	Criminal 1		Motion Hearing	Tochka, Hon. Robert N	Held - Under advisement
03/20/2019 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Hearing RE: Discovery Motion(s)	Tochka, Hon. Robert N	Held as Scheduled
03/20/2019 09:30 AM	Criminal 9	BOS-7th FL, CR 713 (SC)	Evidentiary Hearing on Suppression	Squires-Lee, Hon. Debra A	Held as Scheduled
04/03/2019 09:30 AM	Magistrate's Session		Filing of Motions		Not Held
04/23/2019 09:30 AM	Criminal 1		Pre-Trial Hearing		Rescheduled
04/24/2019 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Pre-Trial Hearing	Brieger, Hon. Heidi	Held - Under advisement
04/25/2019 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Conference to Review Status	Brieger, Hon. Heidi	Held as Scheduled
05/13/2019 09:30 AM	Criminal 1	BOS-7th FL, CR 704 (SC)	Motion Hearing	Brieger, Hon. Heidi	Held as Scheduled
05/20/2019 02:00 PM	Criminal 2	BOS-8th FL, CR 806 (SC)	Motion Hearing	Miller, Hon. Rosalind H	Held as Scheduled
06/03/2019 02:00 PM	Criminal 2		Final Pre-Trial Conference		Canceled
06/11/2019 09:00 AM	Criminal 2		Jury Trial		Canceled
06/20/2019 09:30 AM	Criminal 1		Motion Hearing	Brieger, Hon. Heidi	Held as Scheduled
07/22/2019 02:00 PM	Criminal 2	BOS-8th FL, CR 806 (SC)	Motion Hearing		Not Held
07/24/2019 02:00 PM	Criminal 2		Motion Hearing	Barry-Smith, Hon. Christopher K	Held as Scheduled
08/05/2019 02:00 PM	Criminal 2	BOS-8th FL, CR 806 (SC)	Final Pre-Trial Conference		Rescheduled
08/14/2019 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial		Rescheduled
09/16/2019 02:00 PM	Criminal 2		Final Pre-Trial Conference	Barry-Smith, Hon. Christopher K	Not Held
09/18/2019 09:00 AM	Criminal 2		Jury Trial	Barry-Smith, Hon. Christopher K	Canceled
10/08/2019 09:00 AM	Criminal 2		Trial Assignment Conference	Ullmann, Hon. Robert L	Rescheduled
10/18/2019 09:00 AM	Criminal 2		Trial Assignment Conference	Ullmann, Hon. Robert L	Held as Scheduled

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
10/28/2019 02:00 PM	Criminal 2	BOS-8th FL, CR 806 (SC)	Final Pre-Trial Conference	Ullmann, Hon. Robert L	Held as Scheduled
11/12/2019 10:00 AM	Criminal 2		Hearing on Motion(s) in Limine	Ullmann, Hon. Robert L	Held as Scheduled
11/13/2019 09:00 AM	Criminal 2	BOS-8th FL, CR 806 (SC)	Jury Trial	Ullmann, Hon. Robert L	Held as Scheduled
11/14/2019 09:00 AM	Criminal 2		Jury Trial	Ullmann, Hon. Robert L	Held as Scheduled
11/18/2019 09:00 AM	Criminal 2		Jury Trial	Ullmann, Hon. Robert L	Held as Scheduled
11/19/2019 09:00 AM	Criminal 2		Jury Trial	Ullmann, Hon. Robert L	Held as Scheduled
11/20/2019 09:00 AM	Criminal 2		Jury Trial	Ullmann, Hon. Robert L	Held as Scheduled
11/21/2019 09:00 AM	Criminal 2		Jury Trial	Ullmann, Hon. Robert L	Held as Scheduled
11/22/2019 09:00 AM	Criminal 2		Jury Trial	Ullmann, Hon. Robert L	Held as Scheduled
11/26/2019 09:30 AM	Criminal 2		Hearing for Sentence Imposition	Ullmann, Hon. Robert L	Held as Scheduled

**Ticklers**

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Pre-Trial Hearing	11/16/2016	05/15/2017	180	10/01/2018
Final Pre-Trial Conference	11/16/2016	10/27/2017	345	11/01/2017
Case Disposition	11/16/2016	11/10/2017	359	11/26/2019
Under Advisement	02/21/2019	03/23/2019	30	03/22/2019

**Docket Information**

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/15/2016	Indictment(s) returned	1	<a href="#">Image</a>
11/15/2016	Commonwealth Brenna Flynn, Esq.'s Motion for an Arrest Warrant. Filed.	2	
11/15/2016	Endorsement on Commonwealth's Motion for an Arrest Warrant, (#2.0): ALLOWED		
11/15/2016	Commonwealth Brenna Flynn, Esq.'s Motion to Seal Appendix A. Filed.	3	
11/15/2016	Endorsement on Commonwealth's Motion to Seal Appendix A, (#3.0): ALLOWED (SEALED)		
11/15/2016	Issued: Straight Warrant issued on 11/15/2016 for Jacques, Eden Chavelle		
11/16/2016	Recalled: Straight Warrant cancelled on 11/16/2016 for Jacques, Eden Chavelle		
11/16/2016	Attorney appearance On this date James N Greenberg, Esq. added as Appointed - Indigent Defendant for Defendant Eden Chavelle Jacques Appointment made for the purpose of Case in Chief by Judge Anne Kaczmarek.		



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
11/16/2016	Event Result: Deft brought into Court The following event: Arraignment scheduled for 11/16/2016 09:30 AM has been resulted as follows: Result: Held as Scheduled Appeared: Defendant Jacques, Eden Chavelle Attorney Greenberg, Esq., James N Attorney Flynn, Esq., Brenna Kacz, MAG - FTR		
11/16/2016	Defendant arraigned before Court.		
11/16/2016	Defendant waives reading of indictment		
11/16/2016	Plea of not guilty entered on all charges.		
11/16/2016	Court inquires of Commonwealth if abuse, as defined by G.L. c. 209A, § 1, is alleged to have occurred immediately prior to or in connection with the charged offense(s).		
11/16/2016	Court finds NO abuse is alleged in connection with the charged offense. G.L. c. 276, § 56A.		
11/16/2016	Commonwealth 's Statement of the case filed	4	<a href="#">Image</a>
11/16/2016	Defendant 's EX PARTE Motion for funds to hire a private investigator filed and allowed as endorsed.	5	
11/16/2016	Bail set at \$1,000,000.00 Surety, \$100,000.00 Cash. Without prejudice. GPS Prior to Release Court Recommends defendant be held at Dedham House of Correction- Norfolk as of 12/27/18) COB: 1. GPS Prior to Release. 2. Stay away form victims and families. 3. Stay away from children under 18. 4. Surrender passport or don't apply for one. (Court Recommends defendant be held at NASHUA ST. JAIL- recommendation issued on 12/6/17)  Judge: Ames, Hon. Mary K		
11/16/2016	Issued on this date:  Mittimus in Lieu of Bail Sent On: 11/16/2016 15:00:13		
11/16/2016	Case assigned to: DCM Track C - Most Complex was added on 11/16/2016		
11/16/2016	Habeas Corpus for defendant issued to Hampshire County House of Correction returnable for 12/20/2016 09:30 AM Bail Hearing.		
12/20/2016	Brought into court Continued by agreement to 1-4-17 re live bail and status(J). Jail list and habe issued Miller, J. - B. Flynn, ADA. - J. Greenberg and K. Porges, Atty. - FTR.		
12/20/2016	Attorney appearance On this date James N Greenberg, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Eden Chavelle Jacques  CPCS appointed. No fee imposed		
12/20/2016	Habeas Corpus for defendant issued to Hampshire County House of Correction returnable for 01/04/2017 09:30 AM Bail Hearing.		
12/20/2016	Defendant 's Motion to withdraw filed and allowed	6	
12/23/2016	Attorney appearance On this date M. Barusch, Esq. added for Defendant Eden Chavelle Jacques		
01/04/2017	Brought into court Deft's oral motion to reduce bail denied Continued by agreement to 1-26-17 re motions hearing(J). Jail list at Souza Tochka, J. - B. Flynn, ADA. - Barusch, Atty. - FTR.		
01/04/2017	Commonwealth 's Motion to restrict distribuion of visual recordings	7	
01/04/2017	Commonwealth 's Statement of discovery(1st)	8	
01/26/2017	Not in court Continued by agreement to 2-8-17 re rule 17 motions(J) Tochka, J. - M. Barusch, Atty. - FTR.		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
02/08/2017	Defendant Not In Court. Continued by agreement to 02/23/2017 re: Rule 17 Motions (Jail List). Tochka, J. - S. McEvoy, ADA. for B. Flynn, ADA. - M. Barusch, Atty. - FTR.		
02/08/2017	Defendant 's Motion for funds for Investigator.	9	
02/08/2017	Endorsement on Motion for funds for Investigator, (#9.0): ALLOWED		
02/08/2017	Defendant 's Motion for funds for Transcript.	10	
02/08/2017	Endorsement on Motion for funds for Transcript., (#10.0): ALLOWED		
02/08/2017	Defendant 's Motion for Production of files from Department of Children and Families (DCF). Impounded.	11	
02/08/2017	ORDER for Medical Records for from Department of Children and Families (DCF) Filed. Impounded.	12	
02/08/2017	Defendant 's Motion to Vacate Detainee's Transfer to D.O.C. Correctional Institution and Memorandum.	13	
02/08/2017	Commonwealth 's Motion for a Protective Order.	14	
02/08/2017	Defendant 's Motion for Discovery Rule 14.	15	
02/23/2017	Deft Brought into Court Hearing re: p#13. After Hearing, p#13 Taken Under Advisement Continued by agreement to 3/2/17 for hearing re: Further Motion hearing JAIL LIST Commonwealth to Comply w/ Discovery by 3/2/17 -Video Conference at 2:30pm w/ Souza Baranowski  Tochka, J B Flynn, ADA M Barusch, ATTY FTR		
02/23/2017	Defendant 's Motion for Witness List (Rule 14 Discovery) filed	16	
02/24/2017	Endorsement on Motion to Vacate Detainee's Transfer to D.O.C. Correctional Institution and Memorandum, (#13.0): DENIED as endorsed, notice to attorneys.  Tochka, J		<a href="#">Image</a>
02/24/2017	General correspondence regarding Due to an Incident in Lockup on 2/23/17, defendant is not to be transported and all future dates should be by Video Conference at Request of Security. Souza Baranowski Video Conferencing Contact Info: Joe McGreevy 1(508)-279-3890		
03/02/2017	On video at Nashua St Jail Continued by agreement to 4-4-17 status re records - Rule 17(J) Tochka, J. - B. Flynn, ADA. - M. Barusch, Atty. - FTR.		
03/08/2017	Order for Production of Records issued to Keeper of Records of Department of Children & Families to be returned to court by 03/23/2017 Filed	17	
03/08/2017	Notice and Summons (Dwyer) issued to Keeper of Records, Department of Children and Families to produce privileged records by 03/23/2017 to the Clerk of the Superior Court.		
04/04/2017	Not in court As to P#17 Summons to re-issue. Returnable 4-25-17 Continued by agreement to 4-27-17 re status(J) Cannone, J. - B. Flynn, ADA. - M. Barusch, Atty. - FTR.		
04/04/2017	Defendant 's Motion to clarify protective order	18	
04/04/2017	Endorsement on , (#18.0): ALLOWED		<a href="#">Image</a>
04/06/2017	Notice and Summons (Dwyer) issued to Keeper of Records, Department of Children and Families to produce privileged records by 04/25/2017 to the Clerk of the Superior Court.		
04/27/2017	Deft not in court Continued by order of court to 5-16-17 status re records(J) Deft's request to have deft present on 5-16-17 is denied		



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
	Cannone, J. - B. Flynn, ADA. - M. Barusch, Atty. - FTR		
04/27/2017	Defendant 's Motion for contempt hearing for Dept of Children and families	19	
05/10/2017	Other Records received from Department of Children and Families (DCF). (DWYER- Stored on 14th Floor)		
05/16/2017	Event Result: The following event: Conference to Review Status scheduled for 05/16/2017 09:30 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties		
05/18/2017	Deft not in court Continued by agreement to 6-15-17 re PTH(J) Cannone, J. - B. Flynn, ADA. - M. Barusch, Atty. - FTR		
05/18/2017	Protective Order issued for defense counsel access to presumptively privileged records.	20	
05/18/2017	Defendant 's Motion for permission to copy records	21	
05/18/2017	Endorsement on , (#21.0): ALLOWED		<a href="#">Image</a>
06/15/2017	Deft not in court Continued by order of court to 7-11-17 re status(J) and by agreement to 8-28-17 re FPTH(806, 2pm) and 9-18-17 re trial(806) Cannone, J. - B. Flynn, ADA. - M. Barusch, Atty. - FTR		
06/15/2017	Event Result: The following event: Final Pre-Trial Conference scheduled for 10/02/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Joint request of parties		
06/15/2017	Event Result: The following event: Jury Trial scheduled for 10/30/2017 09:00 AM has been resulted as follows: Result: Rescheduled Reason: Joint request of parties		
06/15/2017	Suffolk County District Attorney files certificate of compliance.	22	
06/15/2017	Defendant 's Motion for the production of additional files from DCF and affidavit filed **Under Seal**	23	
06/15/2017	Defendant 's Motion to allow Commonwealth and defendant access to Dwyer Records from DCF in order to allow additional discovery litigation	24	
06/15/2017	Endorsement on , (#24.0): ALLOWED		<a href="#">Image</a>
06/15/2017	Defendant 's Motion for other reports at addresses of incident (Rule 14)	25	
06/15/2017	Defendant 's Motion for reports and investigation (Rule 14)	26	
06/15/2017	Defendant 's Motion for reports and investigation (Rule 14)	27	
07/11/2017	Event Result: The following event: Conference to Review Status scheduled for 07/11/2017 09:30 AM has been resulted as follows: Result: Not Held Reason: Joint request of parties		
07/13/2017	Defendant 's Motion to allow the defendant to be physically present at hearing on contested discovery motions, filed.	28	
08/08/2017	Deft not in court Continued to 8-10-17 by order of court for rule 14 and rule 17 motion and motion to be present for future hearing at 230pm. Jail list on video Sullivan, J. - B. Flynn, ADA. - M. Barusch, Atty. - FTR.		
08/10/2017	Deft on video at Nashua St Jail Hearing re motion to be brought into court for all proceedings, P#28, denied as to proceedings of 8-10-17 After hearing, P#25, 26 and 27 allowed P#11 and 12 taken under advisement Continued by order of court to 8-28-17 re video bail(J). Jail list		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
	Sullivan, J. - B Flynn, ADA. - M. Barusch, Atty. - FTR		
08/10/2017	Defendant 's Motion to require Commonwealth to identify first complaint witness for each alleged victim filed and agreed	30	
08/10/2017	Commonwealth 's Memorandum of law in opposition to deft's motion to compel production of additional reports from the Dept of Children and families and reports from Codman Square Health Center	29	
08/11/2017	ORDER: P#11 allowed, See attached order(P#12) for names P#29 allowed as to #1, 2 and 6 - Denied as to #3, 4 and 5 Order filed ADA Flynn and Atty Barusch notified with copy	31	
08/15/2017	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: M. Barusch, Esq. Attorney: Brenna Flynn, Esq.		
08/15/2017	Notice and Summons (Dwyer) issued to Keeper of Records, Department of Children and Families (DCF) and Codman Square Health Center to produce privileged records by 08/28/2017 to the Clerk of the Superior Court.	32	
08/25/2017	Defendant 's Motion to allow the deft to be physically present at hearing on motion to continue and motion to reconsider protective order	33	
08/25/2017	Defendant 's Motion to reconsider protective order by allowing the deft access to forensic interview recording	34	
08/25/2017	Defendant 's Motion to continue	35	
08/28/2017	On video at Nashua St Jail Continued to 11-13-17 re FPTH(806) and to 11-29-17 re trial(806) After hearing motion to reconsider protective order allowed as stated on record, Order to follow After hearing deft's oral motion for reduction of bail, denied Continued by agreement to 9-21-17 for status re Commonwealth's counsel(J). Jail list, 2pm Sullivan, J. - B. Flynn, ADA. - Barusch, Atty. - FTR.		
08/28/2017	Event Result: The following event: Final Pre-Trial Conference scheduled for 08/28/2017 02:00 PM has been resulted as follows: Result: Rescheduled Reason: Joint request of parties		
08/28/2017	Endorsement on , (#35.0): ALLOWED After hearing		<a href="#">Image</a>
08/30/2017	Event Result: The following event: Jury Trial scheduled for 09/18/2017 09:00 AM has been resulted as follows: Result: Rescheduled Reason: Joint request of parties		
09/08/2017	General correspondence regarding Deft Files Amendment to Protective Order Regarding Audio/Video Recordings	37	
09/20/2017	Pro Se Defendant 's Motion to Request Evidentiary Hearing	36	
09/21/2017	Deft on video at Nashua St Jail Oral motion to re-issue Rule 17 motions allowed Rule 14 discovery into to be provided within 30 days Continued by agreement to 10-24-17 for status(J). On video Jail list Summons to re-issue Sullivan, J. - B Flynn, ADA. - M. Barusch, Atty. - FTR		
10/02/2017	Notice and Summons (Dwyer) issued to Keeper of Records, Department of Children and Families to produce privileged records by 10/16/2017 to the Clerk of the Superior Court. (Summons Re-Issued re: P#17)		
10/20/2017	Pro Se Defendant 's Motion to Negate Improper First Complaint Witness. w/affidavit and Memorandum	38	
10/20/2017	Pro Se Defendant 's Motion for Relief From Prejudicial Joinder. w/affidavit and Memorandum	39	



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
10/24/2017	On video Continued by agreement to 11-1-17 re show cause hearing(J). Jail list, video B Flynn, ADA. - M Barusch, Atty. - FTR  Judge: Miller, Hon. Rosalind H		
10/24/2017	Commonwealth's Notice of appearance  Judge: Miller, Hon. Rosalind H	40	
10/24/2017	Commonwealth's Motion to continue  Judge: Miller, Hon. Rosalind H	41	
10/24/2017	Defendant's Motion for contempt or show cause hearing Show cause orders issued to Dept of Children and Families and Codman Square health center  Judge: Miller, Hon. Rosalind H	42	
10/30/2017	Pro Se Defendant's Motion for A Bill of Particulars	43	
10/31/2017	Medical Records received from Department of Children and Families (Stored on 14th Floor in Med/Bus Records)		
11/01/2017	On video at Nashua St Jail Continued by agreement to 11-13-17 hearing re motions and bail(J). 2pm, Jail list - Video A Polin, ADA. - M Barusch, Atty. - FTR.  Judge: Miller, Hon. Rosalind H		
11/01/2017	Medical Records received from Codman Square Health Center. (Stored on the 14th floor dwyer)		
11/01/2017	Event Result: Judge: Miller, Hon. Rosalind H The following event: Jury Trial scheduled for 11/29/2017 09:00 AM has been resulted as follows: Result: Canceled Reason: Joint request of parties		
11/01/2017	Commonwealth's Motion to restrict distribution of discovery to deft re police reports  Judge: Miller, Hon. Rosalind H	44	
11/13/2017	Deft on Video at NSJ. Hearing re: Motions Held Also Hearing re: Bail. After Hearing, Deft's Oral Motion for Reduction of Bail is Denied Continued by agreement to 12/6/17 for Hearing re: Motions to Dismiss and Arraignment on 1784CR800, JAIL LIST on Video at 2:30PM Rule 36 Waived until 12/6/17  Miller, J A Polin, ADA M Barusch, ATTY FTR  Judge: Miller, Hon. Rosalind H		
11/13/2017	Commonwealth's Motion to Restrict Distribution of Discovery to Defendant re: Police Reports filed	45	
11/13/2017	Commonwealth's Motion for Court Order to Return Discovery filed	46	
11/13/2017	Commonwealth's Motion for a Protective Order w/ affidavit filed	47	
11/13/2017	Defendant's Motion Opposing Commonwealth's Request for an Order Restricting the Distribution of Discovery filed UNDER SEAL by Order of the Court	48	
11/13/2017	Defendant's Motion to dismiss I filed UNDER SEAL by Order of the Court	49	
11/13/2017	Defendant's Motion to dismiss II filed w/ memorandum	50	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
11/29/2017	Defendant 's Motion to Allow the Defendant to be Physically Present At Arriagnment on New Charge And Motions to Dismiss	51	
12/06/2017	Brought into court After hearing, P#49 taken under advisement P#50 deemed moot Continued by agreement to 1-4-18 re PTC(CM), to 4-23-18 re FPTH(806) and to 5-14-18 re trial(806) A Polin, ADA. - M Barusch, Atty. - FTR  Judge: Miller, Hon. Rosalind H  Judge: Miller, Hon. Rosalind H		
12/06/2017	Offense Disposition:: Charge #15 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B On: 12/06/2017 Judge: Hon. Rosalind H Miller By: Hearing Nolle Prosequi		
12/06/2017	Commonwealth 's Notice of discovery, third  Judge: Miller, Hon. Rosalind H	52	
12/07/2017	Commonwealth files Nolle Prosequi as to count(s): 15 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B	53	
12/21/2017	Commonwealth 's Supplemental Filing for Commonwealths Motion to Restrict Distribution of Discovery to Defendant re; Police Reports Filed	54	
01/04/2018	Event Result: Case scheduled for motions filing on 1/4/2018, court closed due to inclement weather. Continued by agreement until 1/23/2018 for motions filing, magistrate session 9:30AM  Judge: Medeiros, Lisa B		
01/23/2018	Deft brought into court Continued by agreement to 2-15-18 status re discovery(J). Jail list Polin, ADA. - W Roa,Atty. - FTR  Judge: Tochka, Hon. Robert N		
01/23/2018	Attorney appearance On this date Connor M Barusch, Esq. dismissed/withdrawn for Defendant Eden Chavelle Jacques		
01/23/2018	Attorney appearance On this date William Roa, Esq. added as Appointed - Indigent Defendant for Defendant Eden Chavelle Jacques Appointment made for the purpose of Case in Chief by Judge Hon. Robert N Tochka.		
01/23/2018	Legal Counsel Fee Waived. Judge: Tochka, Hon. Robert N		
01/23/2018	's Motion to withdraw  Judge: Tochka, Hon. Robert N	55	<a href="#">Image</a>
01/23/2018	Endorsement on , (#55.0): ALLOWED  Judge: Tochka, Hon. Robert N		<a href="#">Image</a>
02/06/2018	ORDER: Memorandum of decision - Findings re: Motion to dismiss (P#49) -Paper #49 DENIED (006-011) Notice with copy to A. Polin ADA Notice with copy to W. Roa, Atty  Judge: Miller, Hon. Rosalind H	56	<a href="#">Image</a>
02/08/2018	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: William Roa, Esq. Attorney: Ashley E Polin, Esq.		



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
02/15/2018	Deft not in court Continued by agreement to 3-12-18 hearing re status(J). Jail list A Polin, ADA. - FTR  Judge: Tochka, Hon. Robert N		
02/15/2018	Defendant 's Motion regarding Rule 14 Discovery	57	
02/15/2018	Defendant 's Motion for funds for investigator	58	
02/15/2018	Endorsement on , (#58.0): ALLOWED  Judge: Tochka, Hon. Robert N		<a href="#">Image</a>
03/12/2018	Deft brought into court Continued by agreement to 4-9-18 re video bail(J). Jail list, 2pm B Flynn, ADA. - W Roa, Atty. - FTR.  Judge: Tochka, Hon. Robert N		
04/09/2018	ORDER: Findings and Order regarding Bail, Filed.  Judge: Cannone, Hon. Beverly J	59	<a href="#">Image</a>
04/09/2018	Defendant on video at Nashua Street Jail, Hearing RE: Bail held, - After hearing, Deft's ORAL motion for reduction of Bail is DENIED - Continued by agreement to 5/7/18 for Status RE: Discovery (Criminal session 1, CtRm 704) B. Flynn, ADA - W. Roa, Atty - FTR  Judge: Cannone, Hon. Beverly J		
04/23/2018	Defendant not in court. Case taken off list. Case has next date of 5/7/18. ADA Brinna Flynn FTR/C.O'Neill  Judge: Muse, Hon. Christopher J		
05/07/2018	Deft not in court Continued by agreement to 5-21-18 re status of discovery(806) B Flynn, ADA. - W Roa, Atty. - FTR  Judge: Cannone, Hon. Beverly J		
05/07/2018	Defendant 's Motion for counsel to be allowed to receive copies of DCF records returned to the Clerk's Office without cost  Judge: Cannone, Hon. Beverly J	60	
05/07/2018	Defendant 's Motion for counsel to be allowed to receive copies of all police records without cost  Judge: Cannone, Hon. Beverly J	61	
05/07/2018	Defendant 's Motion to access and view video and/or photograph the crime scene  Judge: Cannone, Hon. Beverly J	62	
05/14/2018	Event Result:: Jury Trial scheduled on: 05/14/2018 09:00 AM Has been: Canceled For the following reason: By Court prior to date Hon. Rosalind H Miller, Presiding Appeared: Staff: Carol Mullen-Maguire, Assistant Clerk Magistrate		
05/21/2018	Event Result:: Conference to Review Status scheduled on: 05/21/2018 02:00 PM Has been: Canceled For the following reason: By Court prior to date Hon. Rosalind H Miller, Presiding Appeared:		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
	Staff: Carol Mullen-Maguire, Assistant Clerk Magistrate		
07/11/2018	Defendant Brought into Court 07/11/2018 09:30 AM Has been: Held as Scheduled Hon. Rosalind H Miller, Presiding Continued by Agreement to 8/20/18 for filing of all motions and Bail Hearing (Live)(Jail List) at 930am Continued by Agreement to 10/1/18 for PTH and Compliance in J Session at 930am Continued by Agreement to 11/26/18 for FPTC in CR2 (806) (Jail List)at 200pm Continued by Agreement to 12/3/18 for Trial in CR2(806)(Jail List) at 900am Miller,J - B.Flynn,ADA - W.roa,Atty - FTR  Judge: Miller, Hon. Rosalind H		
07/11/2018	ORDER: Protective Order for Defense Counsel Filed  Judge: Miller, Hon. Rosalind H	63	<a href="#">Image</a>
08/07/2018	ORDER: of Decision on Commonwealth's motion to restrict distribution of discovery to defendant re: Police reports, filed with CD Miller,J. (parties notified with copies)  Judge: Miller, Hon. Rosalind H	64	
08/07/2018	The following form was generated: A Clerk's Notice was generated and sent to: Attorney: William Roa, Esq. Attorney: Brenna Flynn, Esq. Attorney: Ashley E Polin, Esq. Holding Institution: Hampshire County House of Correction Keeper of Record: Department of Children and Families Keeper of Record: Codman Square Health Center		
08/20/2018	Defendant 's Motion for rule 17 subpoena to owner/tenant of 12 Mora Street, apt #3, in Dorchester, MA 02124 with affidavit in support thereof. Filed.	65	<a href="#">Image</a>
08/20/2018	Defendant 's Motion for rule 17 subpoena to owner/tenant of 29 Mount Ida Road, apt#3 in Dorchester, MA 02122 with affidavit in support thereof. Filed.	66	<a href="#">Image</a>
08/20/2018	Defendant 's Memorandum in support of motion to access and view, video and/ or photograph the crime scenes. Filed.	67	<a href="#">Image</a>
08/20/2018	Defendant 's Motion to suppress statements with affidavit in support thereof. Filed	68	<a href="#">Image</a>
08/20/2018	Finding and Order on Bail:  Filed.  Judge: Sullivan, Hon. William F  Judge: Sullivan, Hon. William F	69	<a href="#">Image</a>
08/20/2018	Defendant oral motion for reduction of bail, DENIED.  Judge: Sullivan, Hon. William F		
08/20/2018	Event Result:: Filing of Motions scheduled on: Defendant brought into court, hearing re: motions and bail held. Continued by agreement to 9/13/2018 hering re: motions and scheduling motion to dismiss (first session) - jail list Sullivan, J B. Flynn ADA W. Roa Atty FTR  Judge: Sullivan, Hon. William F		
08/27/2018	Defendant 's Motion for Funds for Child & Adolescent Psychiatrist Expert to Review the Sain Interviews, with Affidavit in Support there of.	70	<a href="#">Image</a>



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
09/13/2018	Endorsement on Motion for funds for child & adolescent psychiatrist expert to review the sain interviews with affidavit in support thereof., (#70.0): ALLOWED  Judge: Sullivan, Hon. William F		<a href="#">Image</a>
09/13/2018	Event Result:: Motion Hearing scheduled on: Defendant brought into court, Continued to already scheduled date of 10/1/2018 hearing re: status re: motion to review crime scene (first session) *jail list  Sullivan, J B. Flynn ADA W. Roa Atty FTR  Judge: Sullivan, Hon. William F		
10/01/2018	Defendant Brouhgt into Court 10/01/2018 09:30 AM Has been: Held as Scheduled Hon. Rosalind H Miller, Presiding Continued to 11/21/18 by Agreement for Hre: Motion to Suppress in Ctrm 713, Jail List Miller,J - B.Flynn,ADA - W.Roa,Atty -FTR  Judge: Miller, Hon. Rosalind H		
10/01/2018	Endorsement on Motion to Access and View, Video and/or Photograph the Crime Scenes, (#62.0): Other action taken See Endorsement Note: Court orders all Police Reports to be Provided to Defense Counsel  Judge: Miller, Hon. Rosalind H		<a href="#">Image</a>
10/16/2018	Pro Se Defendant 's Motion for ineffective Assistance of Counsel, with Affidavit (Notice sent with copy of Motion to ADA A. Polin and Atty. W. Roa)	71	<a href="#">Image</a>
10/16/2018	Pro Se Defendant 's Motion for Defendant to be Brought in for hearing on Motion to Remove Counsel and Appoint New Counsel, with Affidavit (Notice sent with copy of Motion to ADA A. Polin and Atty. W. Roa)	72	<a href="#">Image</a>
10/16/2018	Pro Se Defendant 's Motion for the Defendant to be held in other Facility, with Affidavit (Notice sent with copy of Motion to ADA A. Polin and Atty. W. Roa)	73	<a href="#">Image</a>
10/16/2018	Pro Se Defendant 's Motion of Interlocutory Appeal and Stay of Proceedings (Notice sent with copy of Motion to ADA A. Polin and Atty. W. Roa)	74	<a href="#">Image</a>
10/16/2018	Pro Se Defendant 's Motion for Discovery, Rule 14 (Notice sent with copy of Motion to ADA A. Polin and Atty. W. Roa)	75	<a href="#">Image</a>
11/07/2018	Event Result:: Evidentiary Hearing on Suppression scheduled on: 11/21/2018 09:00 AM Has been: Rescheduled For the following reason: Court Order Hon. Mary K Ames, Presiding Appeared: Staff: Rourke Donnelly, Assistant Clerk Magistrate		
11/21/2018	Defendant Brought into Court. Hearing re: Counsel. Continued by Order of the Court to 12/03/2018 Status re: Discovery (Ctrm 704)(Jail List). 11/26/2018 FPTC & Trial Date 12/03/2018 Canceled. Ullman, J. - D. Deakin, ADA. - R. barrett, Atty. - FTR.		
11/21/2018	Defendant 's Motion for Withdrawal of Counsel, with Affidavit re: William Roa	76	<a href="#">Image</a>
11/21/2018	Endorsement on Motion for Withdrawal of Counsel re: William Roa., (#76.0): ALLOWED  Judge: Ullmann, Hon. Robert L		<a href="#">Image</a>
11/21/2018	Attorney appearance On this date Richard J Barrett, Esq. added as Appointed - Indigent Defendant for Defendant Eden Chavelle Jacques Appointment made for the purpose of Case in Chief by Judge Hon. Robert L Ullmann.		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
11/21/2018	Legal Counsel Fee Waived. Judge: Ullmann, Hon. Robert L		
11/21/2018	Endorsement on Motion for Defendant to be Brought in for hearing on Motion to Remove Counsel and Appoint New Counsel, with Affidavit, (#72.0): ALLOWED  Judge: Ullmann, Hon. Robert L		<a href="#">Image</a>
11/21/2018	Defendant 's Notice of Discovery I.	77	<a href="#">Image</a>
11/21/2018	Defendant 's Motion to Distribute Visual Recordings and Transcripts of said Recordings to an Expert for Analysis.	78	<a href="#">Image</a>
11/21/2018	Endorsement on Motion to Distribute Visual Recordings and Transcripts of said Recordings to an Expert for Analysis., (#78.0): ALLOWED  Judge: Ullmann, Hon. Robert L		<a href="#">Image</a>
11/21/2018	Defendant 's Motion to Distribute Entire Physical and Electronic file to Successor Counsel.  Judge: Ullmann, Hon. Robert L	79	
11/21/2018	Endorsement on Motion to Distribute Entire Physical and Electronic file to Successor Counsel., (#79.0): ALLOWED  Judge: Ullmann, Hon. Robert L		<a href="#">Image</a>
11/21/2018	Attorney appearance On this date William Roa, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Eden Chavelle Jacques		
12/03/2018	Issued on this date:  Mittimus in Lieu of Bail Sent On: 12/03/2018 11:32:07	80	
12/03/2018	Defendant brought into court. Case continued to 12/27/18 by agreement for Status Re: Discovery and Setting of Track (Criminal 1, CTRM 704) *Jail List* At the request of the defendant on Mittimus - (Court recommends defendant be held at NASHUA ST. JAIL)  D. Deakin, ADA - R. Barrett, Atty - FTR  Judge: Miller, Hon. Rosalind H		
12/27/2018	Conference to Review Status, RE: Setting of Track Held  Continued by agreement as follows: 01/15/2019 for Written Compliance RE: Discovery by Commonwealth - Out of court Date 02/04/2019 for Motion Filing - Out of court Date. 04/03/2019 for Hearing RE: Filing of Motions in CTRM 705 at 9:30am 04/23/2019 for Pre-Trial Hearing in CTRM 704 at 9:30am *Jail List 06/03/2019 for Final Pre Trial Conference in CTRM 806 at 2:00pm *Jail List 06/11/2019 for Jury Trial in CTRM 806 at 9:00am *Jail List  NOTE: At the request of defendant, Court recommends defendant to be held at Dedham House of Correction- Norfolk  M.Ames,J K.Siconolfi,ADA R.Bame,Atty FTR		
12/27/2018	Attorney appearance On this date Kyle E Siconolfi, Esq. added as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
12/27/2018	Defendant Kyle E Siconolfi, Esq.'s Notice of Appearance (Filed)	81	<a href="#">Image</a>



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
12/27/2018	Issued on this date:  Mittimus in Lieu of Bail Sent On: 12/27/2018 12:08:39	82	
01/15/2019	Commonwealth 's Notice of Discovery Fourth	83	<a href="#">Image</a>
01/15/2019	Commonwealth 's Notice of Second Certificate of Compliance Regarding Pre-Trial Discovery	84	<a href="#">Image</a>
01/22/2019	Pro Se Defendant 's Motion to Remove Counsel and Proceed Pro Se with Stand by Counsel (Notice sent to ADA K. Siconolfi and Atty. R. Barrett with Copy of Motion).	85	<a href="#">Image</a>
01/31/2019	Richard J Barrett, Esq.'s Motion to Withdraw as Counsel (Filed)	86	<a href="#">Image</a>
01/31/2019	Docket Note: Case continued to 2/6/19 at the request of R. Barrett for Hearing Re: Counsel (Criminal 1, CTRM 704). *Jail List*  R. Tochka, J - R, Barrett, Atty - J. Pardi, ACM		
02/06/2019	Endorsement on Motion to remove counsel and proceed pro-se with stand by counsel., (#85.0): ALLOWED		<a href="#">Image</a>
02/06/2019	Endorsement on Motion to withdraw as counsel., (#86.0): ALLOWED		<a href="#">Image</a>
02/06/2019	Pro Se Defendant 's Motion for Rule 14 discovery. Filed.	87	<a href="#">Image</a>
02/06/2019	Pro Se Defendant 's Motion to dismiss with affidavit and memorandum in support thereof. Filed. SEALED pursuant to M.G.L. Ch. 268, Sect. 13D(e)	88	<a href="#">Image</a>
02/06/2019	Attorney appearance On this date Richard J Barrett, Esq. dismissed/withdrawn as Appointed - Indigent Defendant for Defendant Eden Chavelle Jacques		
02/06/2019	Attorney appearance On this date Eric Brian Tennen, Esq. added as Limited Appearance Counsel for Defendant Eden Chavelle Jacques		
02/06/2019	Event Result:: Hearing for Appearance / Appointment of Counsel scheduled on: Defendant brought into court, hearing held After Colloguy defendant will proceed pro-se Continued by agreement to 2/21/2019 hearing re: motions (first session)  Tochka, J K. Siconolfi ADA Defendant Pro-Se E. Tennen Atty (stand-by) FTR		
02/06/2019	Pro Se Defendant 's Motion to Dismiss Indictment #003 McCarthy (Filed) **Filed UNDER SEALED pursuant to M.G.L. Chap. 268, sec. 13D(e)**	88.1	
02/06/2019	Appointment made for the purpose of Case in Chief by Judge Hon. Robert N Tochka.		
02/19/2019	Commonwealth 's Motion to impound grand jury minutes and exhibits filed GJ Minutes and exhibits SEALED pursuant to M.G.L. Ch. 268, Sect. 13D(e)	89	<a href="#">Image</a>
02/19/2019	Commonwealth 's Memorandum of law in opposition to defendant's motion to dismiss counts 003 AND 011 of the indictment filed SEALED pursuant to M.G.L. Ch. 268, Sect. 13D(e)	90	<a href="#">Image</a>
02/21/2019	Endorsement on Motion Rule 14 Discovery Motion, (#57.0): ALLOWED Allowed by Agreement, Subject to redaction.		<a href="#">Image</a>
02/21/2019	Endorsement on Motion Rule 14 Motion for Discovery, (#75.0): ALLOWED Allowed by Agreement, subject to Redaction		<a href="#">Image</a>

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
02/21/2019	<p>Defendant Brought Into court Motion Hearing RE: Motion to Dismiss and Motion to Dismiss #003 and #011, held. Matter taken under advisement.</p> <p>Case continued to 3/20 by Agreement RE: Motion to Suppress (Motions Session, CTRM 713) NEED JAIL LIST Case continued to 3/20 by Agreement RE: Discovery Motions (1st Session , CTRM 704) JAIL LIST</p> <p>K. Siconolfi, ADA Pro-Se Defendant E. Tennen, Stand by Atty FTR 11:26 am</p>		
03/13/2019	Opposition to paper #68.0 Defendant's Motion to Suppress Statements filed by Suffolk County District Attorney		
03/20/2019	<p>Defendant brought into court</p> <p>Hearing regarding Discovery Motion(s) was held. Matter sent to 713 for Motion to Suppress previously scheduled for today.</p> <p>Tochka, J K. Siconolfi, ADA Defendant, Pro Se B. Tennen, (Standby Atty) FTR 10:20 am</p>		
03/20/2019	<p>Event Result:: Evidentiary Hearing on Suppression scheduled on: 03/20/2019 09:30 AM Has been: Held as Scheduled Hon. Debra A Squires-Lee, Presiding Appeared: Staff: Rourke Donnelly, Assistant Clerk Magistrate</p>		
03/20/2019	<p>Event Result:: Pre-Trial Hearing scheduled on: 04/23/2019 09:30 AM Has been: Rescheduled For the following reason: Request of Defendant Hon. Debra A Squires-Lee, Presiding Appeared: Staff: Al Fiore, Assistant Clerk Magistrate James Pardi, Assistant Clerk Magistrate</p>		
03/22/2019	<p>MEMORANDUM &amp; ORDER:  on Defendant's Motion to Dismiss - DENIED  Judge: Tochka, Hon. Robert N  (Copy of Notice and Memorandum and Order sent to ADA K. Siconolfi, Atty E. Tennen, and Defendant Pro Se)</p>	92	<a href="#">Image</a>
03/27/2019	Defendant 's Supplemental, Memorandum in Support of his Motion to Suppress Statements. Filed.	93	<a href="#">Image</a>
03/29/2019	Commonwealth 's Supplemental, Notice of filing in opposition to defendant's motion to suppress statements filed	94	<a href="#">Image</a>
03/29/2019	Commonwealth 's Assented to Motion to impound exhibits submitted in hearing RE: defendant's motion to suppress statements filed	95	<a href="#">Image</a>
04/03/2019	<p>Endorsement on Motion to suppress , (#68.0): DENIED See Decision and Order Dated April 3, 2019</p>		<a href="#">Image</a>
04/03/2019	<p>The following form was generated: A Clerk's Notice was generated and sent to: Defendant: Eden Chavelle Jacques Attorney: Eric Brian Tennen, Esq. Attorney: Ashley E Polin, Esq. Attorney: Kyle E Siconolfi, Esq.</p>		



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
04/03/2019	ORDER: Decision and Order On Defendant's Motion to Suppress Statements , filed P# 68 Denied	96	<a href="#">Image</a>
04/03/2019	Endorsement on Motion to Impound Exhibits, (#95.0): ALLOWED Exhibits 2-6 Ordered Impounded, Squires-Lee/J  Judge: Squires-Lee, Hon. Debra A		
04/03/2019	Defendant not in court, Filing of Motions, not Held. Case has next date of 04/24/2019 RE: Pre-Trial Hearing in CTRM 704 at 9:30am *Jail List  M. Fentress, MAG A. Rizzo for K. Siconolfi, ADA FTR 12:01pm		
04/23/2019	Commonwealth 's Notice of expert testimony of doctor Amy Tishelman or Doctor Stephanie Block filed	97	<a href="#">Image</a>
04/23/2019	Commonwealth 's Notice of expert testimony of doctor Alice Newton or Doctor Celeste Wilson filed	98	<a href="#">Image</a>
04/24/2019	Defendant Brought Into Court Pre-Trial Hearing, Not Held Motion Hearing, Held RE: p#87 Taken Under Advisement  Case Continued to 5/13/19 by Agreement RE: Motion hearing, Commonwealth Motion for Joinder (1st Criminal Session, CTRM 704) JAIL LIST  Brieger, J K. Siconolfi, ADA E. Tennen, Atty J. Pardi, ACM FTR 10:28 am		
04/25/2019	ORDER: Amending Existing Protective Order (Filed)	99	<a href="#">Image</a>
04/25/2019	ORDER: Order Modifying Protective order (Filed)	100	<a href="#">Image</a>
04/25/2019	Defendant not In Court  ORDERS: Filed  Brieger, J E. Tennen, Atty (stand-by) NO FTR		
05/03/2019	Endorsement on Rule 14 Discovery Motion, (#15.0): ALLOWED "After hearing, this motion is ALLOWED only insofar as the Commonwealth must produce all discovery required by Mass. R. Crim. P. 14." H. Brieger, J (5/03/19) (Notice with copy of endorsement sent to ADA K. Siconolfi and Atty E. Tennen)		<a href="#">Image</a>
05/03/2019	Endorsement on Rule 14 Motion for Discovery, (#87.0): DENIED "After a hearing, this motion is DENIED after review of the 11/23/18 correspondence from the Boston Police Department." H. Brieger, J (5/03/19) (Notice with copy of endorsement sent to ADA K. Siconolfi and Atty E. Tennen)  Judge: Brieger, Hon. Heidi		<a href="#">Image</a>
05/03/2019	Commonwealth 's Motion for Joinder (Filed)	101	<a href="#">Image</a>
05/13/2019	Defendant Brought Into Court Motion Hearing RE: Motion for Joinder (p16) Docket # 1784CR00800  Motion was ALLOWED, Note* Defendant Objecting thereto  Case continued by Agreement to 5/20/19 RE: Motion to Continue Trial (2nd Criminal Session, CTRM 806) 2pm		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
	Needs Jail List  Brieger, J K. Siconolfi, ADA E. Tennan, Atty D. Sheehan, ACM FTR 10:17, 10:24		
05/20/2019	Rule 36 waived re:  until 8/14/19		
05/20/2019	Event Result:: Jury Trial scheduled on: 06/11/2019 09:00 AM Has been: Canceled For the following reason: Request of Defendant Hon. Rosalind H Miller, Presiding Staff: Stacey Pichardo, Assistant Clerk Magistrate		
05/20/2019	Defendant brought into court.  Status conference held. By agreement the Final Pretrial Conference date of 06/03/19 and Trial date of 06/11/19 are cancelled. By agreement, this matter is continued as follows:  07/22/19 at 2:00PM for Hearing re: Motion to Sever in Courtroom 806. Defendant added to the JAIL LIST. 08/05/19 at 2:00PM for Final Pretrial Conference in Courtroom 806. Defendant added to the JAIL LIST. 08/14/19 at 9:00AM for Jury Trial in Courtroom 806. Defendant added to the JAIL LIST  Rule 36 waived until 8/14/19  Miller, J. - S. Pichardo, ACM - K. Siconolfi, ADA - E. Tennen (stand-by), Atty - FTR at 3:50PM		
06/20/2019	Defendant 's EX PARTE Motion for funds for an investigator with affidavit in support thereof (Filed and Allowed)  Judge: Brieger, Hon. Heidi	102	<a href="#">Image</a>
06/20/2019	Defendant 's EX PARTE Motion to Seal with affidavit in support thereof (Filed and DENIED for the reasons given in open court)	103	<a href="#">Image</a>
06/20/2019	Defendant not in court, Motion Hearing, Held Case has next date of 07/22/2019 RE: Motion Hearing in CTRM 806 at 2:00pm  H. Brieger, J E. Tennen, Atty FTR 12:16pm		
07/22/2019	Defendant brought into court.  Motion Hearing not held at the request of Defendant. Defense counsel indicates that they do not wish to be heard on the motion to sever. By agreement, this matter remains on its previously scheduled Final Pretrial and Trial dates:  8/5/19, FPTC, 2:00PM, Ctrm 806, Second Criminal Session Date remains, 8/14/19, 9:00AM, Ctrm 806, Second Criminal Session Trial Dates remain  Hon. Christopher K Barry-Smith, Presiding S. Pichardo, ACM Attorney Siconolfi, Esq., Kyle E, ADA Attorney E. Tennan, Stand By Counsel 11:05AM FTR		
07/24/2019	Defendant not in court (custody, presence excused)  Motion hearing held. Commonwealth's motion to continue is allowed. Defendant objects. Final Pretrial date of 8/5/2019 and Jury Trial date of 8/14/19 are rescheduled. Matter is continued to 9/15/19 at 2:00PM for Final Pretrial Conference at 2:00PM and 9/18/19 at 9:00AM for Jury Trial in Courtroom 806.		



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
	Barry-Smith, J. - S. Pichardo, ACM - K. Siconolfi, ADA - E. Tennen, Stand-by Counsel - FTR at 2:00PM		
07/24/2019	Event Result:: Jury Trial scheduled on: 08/14/2019 09:00 AM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Christopher K Barry-Smith, Presiding Staff: Stacey Pichardo, Assistant Clerk Magistrate		
07/24/2019	Event Result:: Final Pre-Trial Conference scheduled on: 08/05/2019 02:00 PM Has been: Rescheduled For the following reason: Request of Commonwealth Hon. Christopher K Barry-Smith, Presiding Staff: Stacey Pichardo, Assistant Clerk Magistrate		
07/24/2019	Commonwealth 's Motion To Continue	104	<a href="#">Image</a>
07/24/2019	Endorsement on , (#104.0): ALLOWED		<a href="#">Image</a>
09/13/2019	Event Result:: Final Pre-Trial Conference scheduled on: 09/16/2019 02:00 PM Has been: Canceled For the following reason: By Court prior to date Hon. Christopher K Barry-Smith, Presiding  Defendant not in Court, Event canceled by Court prior to date due to session unavailability. Note: Homicide Trial in Progress (Commonwealth V Antiowane Davis 1684CR00977) Court Orders ADA K.Siconolfi and stand by Atty E. Tennen to coordinate with Assistant Clerk in assigned session a next short date for trial assignment. (ADA K.Siconolfi and Stand by Atty E.Tennen each notified via electronic mail)		
09/13/2019	Event Result:: Jury Trial scheduled on: 09/18/2019 09:00 AM Has been: Canceled For the following reason: By Court prior to date Hon. Christopher K Barry-Smith, Presiding  Defendant not in Court, Event canceled by Court prior to date due to session unavailability. Note: Homicide Trial in Progress (Commonwealth V Antiowane Davis 1684CR00977) Court Orders ADA K.Siconolfi and stand by Atty E. Tennen to coordinate with Assistant Clerk in assigned session a next short date for trial assignment. (ADA K.Siconolfi and Stand by Atty E.Tennen each notified via electronic mail)		
10/07/2019	Event Result:: Trial Assignment Conference scheduled on: 10/08/2019 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Hon. Robert L Ullmann, Presiding Staff: Dominic D'Avolio, Assistant Clerk Magistrate		
10/18/2019	Event Result:: Trial Assignment Conference scheduled on: 10/18/2019 09:00 AM Has been: Held as Scheduled Hon. Robert L Ullmann, Presiding Staff: Dominic D'Avolio, Assistant Clerk Magistrate  Defendant brought into Court; matter continued by agreement to 10/28/19 for FPTH; 11/13/19 for Jury Trial. Ullman,J. - K.Siconolfi,Attny - E.Tennen, Attny - FTR @ 9:29AM		
10/28/2019	Attorney appearance On this date Ashley E Polin, Esq. dismissed/withdrawn as Attorney for the Commonwealth for Prosecutor Suffolk County District Attorney		
10/28/2019	Attorney appearance On this date Brenna Flynn, Esq. dismissed/withdrawn for Prosecutor Suffolk County District Attorney		
10/28/2019	Brought into court. FPTC held. Ullman, J. - K. Siconolfi, ADA - E. Tennen, Atty - FTR		
10/28/2019	Joint Pre-Trial Memorandum filed:	105	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
10/28/2019	Commonwealth 's Motion for judicial inquiry into criminal history records of potential trial jurors ect (see mtn)	106	<a href="#">Image</a>
10/29/2019	Commonwealth 's Motion for Individual Voir Dire (Filed)	107	<a href="#">Image</a>
10/29/2019	Commonwealth 's Motion in limine to Permit Identification (Filed)	108	<a href="#">Image</a>
10/29/2019	Commonwealth 's Motion to Admit Prior Convictions for Impeachment Purposes Under M.G.L. c. 233, sec. 21 (Filed)	109	<a href="#">Image</a>
10/29/2019	Commonwealth 's Motion in limine in Support of Introduction of Expert Testimony of Doctor Alice Newton (Filed)	110	<a href="#">Image</a>
10/29/2019	Commonwealth 's Motion in limine in Support of Introduction of Expert Testimony Regarding Delayed Disclosure (Filed)	111	<a href="#">Image</a>
10/29/2019	Commonwealth 's Notice of Intent to Admit Defendant's Statements (Filed)	112	<a href="#">Image</a>
10/29/2019	Defendant 's Motion in limine to Use Juror Questionnaire (Filed)	113	<a href="#">Image</a>
10/29/2019	Defendant 's Motion in limine for Voir-Dire Hearing Regarding First Complaint Evidence (Filed)	114	<a href="#">Image</a>
10/29/2019	Defendant 's Motion in limine to Prohibit Use of the Term "Victim" (Filed)	115	<a href="#">Image</a>
10/29/2019	Defendant 's Motion in limine to Sequester Witnesses (Filed)	116	<a href="#">Image</a>
10/29/2019	Defendant 's Motion to dismiss Count 6 for Insufficient Evidence (Filed)	117	<a href="#">Image</a>
10/29/2019	's Motion to dismiss for Failure to Provide a Speedy Trial with Exhibits in support thereof (Filed)	118	<a href="#">Image</a>
11/05/2019	Commonwealth 's Motion to permit accommodations for child & adolescent witness testimony	119	<a href="#">Image</a>
11/05/2019	Commonwealth 's Motion to admit evidence of related bad acts	120	<a href="#">Image</a>
11/05/2019	Commonwealth 's Notice of intent to admit defendant's statements	121	<a href="#">Image</a>
11/05/2019	Commonwealth 's Motion in limine to preclude reference to any alleged sexual experience of the victim with individuals other than the defendant	122	<a href="#">Image</a>
11/05/2019	Commonwealth 's Motion in limine to introduce First complaint testimony	123	<a href="#">Image</a>
11/05/2019	Commonwealth 's Memorandum of law in opposition to defendant's motion to dismiss (R.36)	124	<a href="#">Image</a>
11/05/2019	Commonwealth 's Submission opposition to defendant's motion to dismiss count 6	125	<a href="#">Image</a>
11/05/2019	Commonwealth 's Motion to impound Grand Jury exhibits	126	<a href="#">Image</a>
11/06/2019	Defendant 's Motion to change clothes in court	127	<a href="#">Image</a>
11/12/2019	Brought into court. Motions in limine held.  Ullman, J. - K. Siconolfi, ADA - E. Tennen, Atty - FTR.		
11/12/2019	Defendant 's Motion to change clothes in court filed and after hearing, Allowed. Ullman, J.	128	<a href="#">Image</a>
11/13/2019	Brought into court. Commonwealth moves for trial / Defendant answers ready  Court Ullman, J. orders Fourteen (14) jurors impaneled.  Ullman, J. - K. Siconolfi, ADA - E. Tennen, Atty - N. King, C./R.		
11/13/2019	Endorsement on for individual voir dire, (#107.0): ALLOWED Also: Commonwealth's Motion #s 106 allowed with conditions as set forth on the record Motion # 108 allowed Motion # 109 allowed to extent as set forth on the record Motion # 110 allowed to extent set forth on the record Motion # 111 allowed to extent set forth on the record Motion # 119 Allowed		



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
	<p>Motion P#120 Allowed to extent set forth on the record</p> <p>Motion P#122 Allowed for the detailed reasons set forth on the record before trial and during cross examination</p> <p>Motion P#123 allowed</p> <p>Motion P#123 allowed</p> <p>Motion P#126 Allowed</p> <p>Defendant's Motion's</p> <p>Motion #113 Allowed</p> <p>Motion # 114, Moot</p> <p>Motion P#115 Allowed</p> <p>Motion P#116 Allowed</p> <p>Motion P#117 Moot, Comm. proceeded in lesser included Offense</p> <p>Motion P#118 Denied to extent set forth on the record</p> <p>Motion P#127 Allowed</p>		
11/14/2019	<p>Brought into court. Jury empanelment completed with Fifteen (15) jurors (not sworn)</p> <p>Ullman, J. - K. Siconolfi, ADA - E.Tennen, Atty - N. King, C./R.</p>		
11/18/2019	<p>Offense Disposition::</p> <p>Charge #5 INDECENT A&amp;B ON CHILD UNDER 14 c265 §13B</p> <p>On: 11/18/2019 Judge: Hon. Robert L Ullmann</p> <p>By: Jury Trial Nolle Prosequi</p> <p>Charge #14 INDECENT A&amp;B ON PERSON 14 OR OVER c265 §13H</p> <p>On: 11/18/2019 Judge: Hon. Robert L Ullmann</p> <p>By: Jury Trial Nolle Prosequi</p> <p>Charge #15 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B</p> <p>On: 12/06/2017 Judge: Hon. Rosalind H Miller</p> <p>By: Hearing Nolle Prosequi</p>		
11/18/2019	<p>Brought into court. Trial resumes with Fifteen (15) jurors present before Ullman, J. - N.King, C./R.</p> <p>Jurors sworn / Indictments formally read / Opening statements / Evidence begins</p>		
11/19/2019	Brought into court. Trial resumes with Fifteen (15) jurors present before Ullman, J. - N.King, C./R.		
11/20/2019	<p>Brought into court. Trial resumes with Fifteen (15) jurors present before Ullman, J. - N.King, C./R.</p> <p>Commonwealth rests / Charge conference held</p>		
11/20/2019	<p>Witness list</p> <p>Attorney: Siconolfi, Esq., Kyle E</p> <p>Judge: Ullmann, Hon. Robert L</p> <p>Applies To: Tennen, Esq., Eric Brian (Attorney) on behalf of Jacques, Eden Chavelle (Defendant); Siconolfi, Esq., Kyle E (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)</p>	129	
11/20/2019	<p>List of exhibits</p> <p>Applies To: Tennen, Esq., Eric Brian (Attorney) on behalf of Jacques, Eden Chavelle (Defendant); Siconolfi, Esq., Kyle E (Attorney) on behalf of Suffolk County District Attorney (Prosecutor)</p>	130	
11/21/2019	<p>Brought into court. Trial resumes with Fifteen (15) Jurors present before Ullman, J. - N.King, C./R.</p> <p>Defendant rests</p> <p>Charge conference held.</p> <p>Closing arguments and charge.</p> <p>Court appoints Juror # 106 in S # 106 K.L. as foreperson of the jury.</p> <p>In the final submission of the case to the jury with a panel of fifteen (15) jurors, Court orders jury reduced to twelve (12) members and by lottery method Clerk draws from the barrel Juror # 203 in S# 7 N.W. Juror# 69 in S# 9 A.B. and Juror # 72 in S # 10 J.S. as alternate jurors</p> <p>Jury deliberations begin at 1:20pm</p> <p>Jury communication / question # 1 marked H for identification</p> <p>Jurors allowed to separate and resume deliberations on the next day 11/21/19</p>		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
11/21/2019	<p>Offense Disposition::            Charge #3 RAPE OF CHILD, AGGRAVATED, FIVE YEAR AGE DIFFERENCE c265 §23A            On: 11/20/2019 Judge: Hon. Robert L Ullmann            By: Jury Trial Dismissed</p> <p>Charge #4 INDECENT A&amp;B ON CHILD UNDER 14 c265 §13B            On: 11/20/2019 Judge: Hon. Robert L Ullmann            By: Jury Trial Dismissed</p> <p>Charge #5 INDECENT A&amp;B ON CHILD UNDER 14 c265 §13B            On: 11/18/2019 Judge: Hon. Robert L Ullmann            By: Jury Trial Nolle Prosequi</p> <p>Charge #10 INDECENT A&amp;B ON PERSON 14 OR OVER c265 §13H            On: 11/20/2019 Judge: Hon. Robert L Ullmann            By: Jury Trial Dismissed</p> <p>Charge #14 INDECENT A&amp;B ON PERSON 14 OR OVER c265 §13H            On: 11/18/2019            By: Jury Trial Nolle Prosequi</p> <p>Charge #15 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B            On: 12/06/2017 Judge: Hon. Rosalind H Miller            By: Hearing Nolle Prosequi</p>		
11/22/2019	<p>Brought into court. Jurors reconvene and resume del berations. Ullman, J. - FTR</p> <p>Verdict returned at 3:30pm</p>		
11/25/2019	<p>Offense Disposition::            Charge #1 ASSAULT TO RAPE CHILD c265 §24B            On: 11/25/2019 Judge: Hon. Robert L Ullmann            By: Jury Trial Guilty Verdict</p> <p>Charge #2 INDECENT A&amp;B ON CHILD UNDER 14 c265 §13B 265/13B/A-5            On: 11/22/2019 Judge: Hon. Robert L Ullmann            By: Jury Trial Guilty Verdict - Lesser Included</p> <p>Charge #3 RAPE OF CHILD, AGGRAVATED, FIVE YEAR AGE DIFFERENCE c265 §23A            On: 11/20/2019            By: Jury Trial Dismissed</p> <p>Charge #4 INDECENT A&amp;B ON CHILD UNDER 14 c265 §13B            On: 11/20/2019            By: Jury Trial Dismissed</p> <p>Charge #5 INDECENT A&amp;B ON CHILD UNDER 14 c265 §13B            On: 11/18/2019            By: Jury Trial Nolle Prosequi</p> <p>Charge #6 RAPE OF CHILD, AGGRAVATED, FIVE YEAR AGE DIFFERENCE c265 §23A            On: 11/25/2019            By: Jury Trial Not Guilty Verdict</p> <p>Charge #7 ASSAULT TO RAPE CHILD c265 §24B            On: 11/22/2019            By: Jury Trial Not Guilty Verdict</p> <p>Charge #8 ASSAULT TO RAPE CHILD c265 §24B            On: 11/25/2019            By: Jury Trial Guilty Verdict</p> <p>Charge #9 INDECENT A&amp;B ON PERSON 14 OR OVER c265 §13H            On: 11/25/2019            By: Jury Trial Guilty Verdict</p> <p>Charge #10 INDECENT A&amp;B ON PERSON 14 OR OVER c265 §13H            On: 11/20/2019</p>		



<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
	<p>By: Jury Trial Dismissed</p> <p>Charge #11 INDECENT A&amp;B ON PERSON 14 OR OVER c265 §13H On: 11/25/2019 By: Jury Trial Guilty Verdict</p> <p>Charge #12 INDECENT A&amp;B ON CHILD UNDER 14 c265 §13B On: 11/22/2019 By: Jury Trial Not Guilty Verdict</p> <p>Charge #13 CHILD IN NUDE, LASCIVIOUS POSE/EXHIBIT c272 §29A(a) On: 11/22/2019 By: Jury Trial Not Guilty Verdict</p> <p>Charge #14 INDECENT A&amp;B ON PERSON 14 OR OVER c265 §13H On: 11/18/2019 By: Jury Trial Nolle Prosequi</p> <p>Charge #15 WITNESS/JUROR/POLICE/COURT OFFICIAL, INTIMIDATE c268 §13B On: 12/06/2017 Judge: Hon. Rosalind H Miller By: Hearing Nolle Prosequi</p>		
11/25/2019	Verdict affirmed, verdict slip filed  001 - Guilty as charged	131	
11/25/2019	Verdict affirmed, verdict slip filed  002 Guilty of lesser included off Indecent A&B on Child under 14	132	
11/25/2019	Verdict affirmed, verdict slip filed  006 Not Guilty	133	
11/25/2019	Verdict affirmed, verdict slip filed  007 Not Guilty	134	
11/25/2019	Verdict affirmed, verdict slip filed  008 - Guilty as charged	135	
11/25/2019	Verdict affirmed, verdict slip filed  009 Guilty as charged	136	
11/25/2019	Verdict affirmed, verdict slip filed  011 Guilty as charged	137	
11/25/2019	Verdict affirmed, verdict slip filed  012 Not guilty	138	
11/25/2019	Verdict affirmed, verdict slip filed  013 Not Guilty	139	
11/26/2019	<p>Defendant sentenced.: Sentence Date: 11/26/2019 Judge: Hon. Robert L Ullmann</p> <p>Charge #: 2 INDECENT A&amp;B ON CHILD UNDER 14 c265 §13B State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days Served Concurrently Charge # 8 Case 1684CR00862</p> <p>Charge #: 8 ASSAULT TO RAPE CHILD c265 §24B State Prison Sentence Not Less Than: 7 Years, 0 Months, 0 Days Not More Than: 10 Years, 0 Months, 0 Days</p> <p>Committed to MCI - Cedar Junction (at Walpole) Credits 1253 Days</p>		

<a href="#">Docket Date</a>	<a href="#">Docket Text</a>	<a href="#">File Ref Nbr</a>	<a href="#">Image Avail.</a>
11/26/2019	Issued on this date:  Mittimus for Sentence (All Charges) Sent On: 11/26/2019 11:00:07	140	
11/26/2019	Event Result:: Hearing for Sentence Imposition scheduled on: 11/26/2019 09:30 AM Has been: Held as Scheduled Hon. Robert L Ullmann, Presiding Staff: Dominic D'Avolio, Assistant Clerk Magistrate		
11/26/2019	Defendant sentenced:: Sentence Date: 11/26/2019 Judge: Hon. Robert L Ullmann  Charge #: 1 ASSAULT TO RAPE CHILD c265 §24B - Five (5) Years Probation Served From and After Charge # 8 Case 16-862  Charge #: 9 INDECENT A&B ON PERSON 14 OR OVER c265 §13H Five (5) Years Probation Served From and After Off. # 008 Case 18-862 and Concurrent with each other  Charge #: 11 INDECENT A&B ON PERSON 14 OR OVER c265 §13H Five (5) Years Probation Served From & After Charge # 008 Case 18-862 and concurrent with each other  C/O/P: 1) Stay away; No direct or Indirect contact with victims K.W., D., J.S., S.S. and all witnesses who testified at Grand Jury - Not within 100 yards of individuals residence 2) No unsupervised contact with any children under 16 years of age 3) Placed on GPS monitoring prior to release with exclusionary zone * not within 100 yards of all victims 4) Register as a Sex Offender 5) Enter and complete Sex Offender Treatment program 6) Submit to DNA sample  Probation: Risk/Need Probation		
11/26/2019	Defendant notified of right of appeal to the Appellate Division of the Superior Court within ten (10) days.  Judge: Ullmann, Hon. Robert L Applies To: Tennen, Esq., Eric Brian (Attorney) on behalf of Jacques, Eden Chavelle (Defendant)		
11/26/2019	Defendant notified of right of appeal to the Appeals Court within thirty (30) days.  Judge: Ullmann, Hon. Robert L Applies To: Tennen, Esq., Eric Brian (Attorney) on behalf of Jacques, Eden Chavelle (Defendant)		
11/26/2019	Notice given to defendant of duty to register as a sex offender. Judge: Ullmann, Hon. Robert L		
11/26/2019	Defendant warned as to submission of DNA G.L. c. 22E, § 3 Judge: Ullmann, Hon. Robert L		
11/26/2019	DNA fee WAIVED Judge: Ullmann, Hon. Robert L		
11/26/2019	Findings and Order of Statutory Fees Judge: Ullmann, Hon. Robert L	142	
11/26/2019	Legal Counsel Fee Waived.  Judge: Ullmann, Hon. Robert L		
11/26/2019	Commonwealth 's Submission of sentencing memorandum	141	<a href="#">Image</a>



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr</u>	<u>Image Avail.</u>
11/26/2019	Defendant 's Motion by Attorney E. Tennen to withdraw as counsel filed and Allowed. Ullman, J.	143	<a href="#">Image</a>
11/26/2019	Defendant 's Motion for copy of trial transcript filed	144	
11/26/2019	Notice of appeal filed by defendant regarding his convictions and judgement.	145	<a href="#">Image</a>
12/02/2019	Endorsement on Motion for copy of trial transcript, (#144.0): ALLOWED		<a href="#">Image</a>
12/02/2019	Notice of appeal from sentence to MCI - Cedar Junction (at Walpole) filed by defendant	146	<a href="#">Image</a>
12/02/2019	Notification to the Appellate Division sent.		
12/03/2019	Docket Note: Emailed Atty E. Tennen regarding new procedure of ordering transcripts		
12/03/2019	Appeal for review of sentence entered at the Appellate Division: Originating Court: Suffolk County Criminal Receiving Court: Suffolk County Criminal Case Number: 1984AD461-SU ;		
12/05/2019	Attorney appearance On this date David Rassoul Rangaviz, Esq. added as Appointed - Appellate Action for Defendant Eden Chavelle Jacques		
12/05/2019	David Rassoul Rangaviz, Esq.'s Notice of Appearance (Filed)	147	<a href="#">Image</a>
01/14/2020	Docket Note: - No certification received by the court in regards to the transcript status, email sent to Atty E. Tennen and Atty D. Rangaviz		
09/25/2020	CD of Transcript of 11/13/2019 09:00 AM Jury Trial, 11/14/2019 09:00 AM Jury Trial, 11/18/2019 09:00 AM Jury Trial, 11/19/2019 09:00 AM Jury Trial, 11/20/2019 09:00 AM Jury Trial, 11/21/2019 09:00 AM Jury Trial received from Nancy McCann. 6		
09/29/2020	Notice to counsel Atty D.Rangaviz and ADA C.Campbell with all transcript(s) sent via e-mail		
09/29/2020	Notice of assembly of record sent to Counsel  Applies To: Campbell, Esq., Cailin (Attorney) on behalf of Suffolk County District Attorney (Prosecutor); Rangaviz, Esq., David Rassoul (Attorney) on behalf of Jacques, Eden Chavelle (Defendant)		<a href="#">Image</a>
09/29/2020	Notice to Clerk J. Stanton of the Appeals Court of Assembly of Record		<a href="#">Image</a>
09/29/2020	Appeal: Statement of the Case on Appeal (Cover Sheet).	148	<a href="#">Image</a>
10/06/2020	Notice of docket entry received from Appeals Court "ORDER: The appeals in 20P1099 and 20P1100 are hereby consolidated. The appeal in 20P1099 is closed and all future filings shall relate to 20P1100 only. Appellant's brief and record appendix in the consolidated appeal are due on or before 11/09/2020."	149	<a href="#">Image</a>
10/07/2020	Attorney appearance On this date William Korman, Esq. added for Defendant Eden Chavelle Jacques		
10/07/2020	William Korman, Esq.'s Notice of Appearance. Filed	150	<a href="#">Image</a>
11/16/2020	Order from Appellate Division of the Superior Court on the Review of Sentence it is ORDERED:  The appeal of the defendant for review of sentences to the M.C.I., Cedar Junction, imposed November 26, 2019 on indictments 1684CR00862 and by the Superior Court Department for the county of Suffo k having been heard and reviewed, it is ORDERED that the judgements imposing said sentence stand and that said appeal be and is hereby dismissed. (Giles, Cosgrove & Kenton-Wa ker, JJ.)	151	<a href="#">Image</a>
06/11/2021	Attorney appearance On this date Joshua M Daniels, Esq. added as Private Counsel for Defendant Eden Chavelle Jacques	152	<a href="#">Image</a>
06/11/2021	Defendant 's Motion for Leave to File Affidavit Supporting Motion for Funds for Private Investigator Ex Parte and Under Seal, with Affidavit in Support of (Notice sent to Ullmann-RAJ with copy of Motion and Docket Sheets)	153	



<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
06/11/2021	Defendant 's Motion for Funds for Private Investigator ,with Ex Parte Affidavit (Filed Under Seal)(Notice sent to Ullmann-RAJ with copy of Motion and Docket Sheets)	154	<a href="#">Image</a>
06/11/2021	Defendant 's Motion to Clarify No-Contact Condition, with Affidavit in Support of (Notice sent to Ullmann-RAJ with copy of Motion and Docket Sheets)	155	<a href="#">Image</a>
06/22/2021	Endorsement on Motion to Clarify No-Contact Condition, with Affidavit of Counsel, (#155.0): Other action taken Commonwealth to Respond by 07/12/2021 (Notice sent to ADA C. Campbell and Attorney J. Daniels)		<a href="#">Image</a>
06/24/2021	Endorsement on Motion for Leave to File Affidavit Supporting Motion for Funds for Private Investigator Ex Parte and Under Seal, with Affidavit in Support of (Notice sent to Attorney J. Daniels), (#153.0): ALLOWED		
06/24/2021	Endorsement on Motion for Funds for Private Investigator ,with Ex Parte Affidavit (Filed Under Seal)(Notice sent to Ullmann-RAJ with copy of Motion and Docket Sheets)(Notice sent to Attorney J. Daniels, (#154.0): ALLOWED		
07/12/2021	Commonwealth 's Response to Defendant's Motion to Clarify No-Contact Condition filed (Notice to Ullmann-RAJ with copy of Response, copy of motion to clarify no-contact condition, and Docket Sheets)	156	<a href="#">Image</a>
07/14/2021	Clarification / Correction of the docket:  Per order of Ullmann, J., docket entry dated 11/26/2019, listing the names of victims among the defendant's conditions of probation, are reduced to their initials on today's date (07/14/2021).  Judge: Ullmann, Hon. Robert L		
07/14/2021	Endorsement on Motion to Clarify No-Contact Condition, (#155.0): ALLOWED to the extent set forth in the Commonwealth's response filed 6/12/21 **Notice to parties via electronic mail		<a href="#">Image</a>
07/14/2021	Endorsement on Response to Defendant's Motion to Clarify No-Contact Condition, (#156.0): ALLOWED The clerk's office shall forthwith replace the victim names in the 11/26/19 docket entry with initials. Defendant shall inform the session clerk by 7/26/21 whether he objects to the Commonwealth's first request in this submission.  **Notice to parties via electronic mail		<a href="#">Image</a>
07/26/2021	Defendant 's Response to commonwealths request regarding clarification of no-contact condition filed. (copy of motion, docket sheets, notice and relevant motions sent to Hon. R Ullmann (RAJ))	157	<a href="#">Image</a>
08/02/2021	Endorsement on Motion to Clarify No-Contact Condition, filed., (#155.0): ALLOWED The probationary sentences commence upon defendant's release from incarceration, and post-conviction investigation directed by counsel for the purpose of presenting this defendant would not violate the relevant condition of probation. Any improper conduct by defendant regarding a witness would be subject to criminal sentences.  (Copy of motion and Notice sent to ADA Campbell and Atty J. Daniels)		<a href="#">Image</a>
08/02/2021	The following form was generated: A Clerk's Notice was generated and sent to: Defendant, Attorney: Joshua M Daniels, Esq. Law Office of Joshua M. Daniels PO Box 300765, Jamaica Plain, MA 02130 Prosecutor, Attorney: Cailin Campbell, Esq. Suffolk County District Attorney's Office 1 Bulfinch Place Third Floor, Boston, MA 02114		
08/23/2021	General correspondence regarding Clerk notice returned		

**Case Disposition**

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Disposed by Jury Verdict	11/26/2019	Ullmann, Hon. Robert L

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

TRIAL COURT DEPARTMENT  
SUFFOLK SUPERIOR DIVISION  
DOCKET: 1684CR00862  
1784CR00800

COMMONWEALTH

v.

EDEN JACQUES

---

COMMONWEALTH'S MOTION *IN LIMINE* TO PRECLUDE REFERENCE TO ANY ALLEGED SEXUAL  
EXPERIENCE OF THE VICTIM WITH INDIVIDUALS OTHER THAN THE DEFENDANT

---

I. Introduction

Now comes the Commonwealth in the above-captioned matter and respectfully moves this Honorable Court *in limine* to prohibit the defendant from making any references before the jury to any alleged sexual experience of the victim with individuals other than the defendant. The Commonwealth anticipates that the defendant may try to use a third party's earlier sexual misconduct towards D.R. to suggest that the defendant is not guilty of the assaults for which he is accused, and to improperly argue third party culprit evidence to distract the jury from D.R.'s identification of the defendant as the perpetrator. The Commonwealth respectfully moves this Court to prohibit such reference or questioning as inadmissible evidence that is improperly prejudicial and misleading, and because any such reference, without a prior *voir dire* or *in camera* hearing by the Court, is prohibited by the rape-shield statute, M.G.L. c. 233, § 21B.

II. Applicable Law

"The rape shield statute is principally designed to prevent defense counsel from eliciting evidence of the victim's promiscuity as part of a general credibility attack." Commonwealth v. Fitzgerald, 412 Mass. 516, 523 (1992). The statute states:

Evidence of the reputation of a victim's sexual conduct shall not be admissible ...[e]vidence of specific instances of a victim's sexual conduct ... shall not be admissible except evidence of the victim's sexual conduct with the defendant or evidence of recent conduct of the victim alleged to be the cause of any physical feature, characteristic, or condition of the victim; provided, however, that such evidence shall be admissible only after an in camera hearing on a written motion for admission of same and an offer of proof. If, after said hearing, the court finds that the weight and relevancy of said evidence is sufficient to outweigh its prejudicial effect to the victim, the evidence shall be admitted; otherwise not. ... The finding of the court shall be in writing .... M.G.L. c. 233, § 21B.

"Rape shield statutes are 'aimed at eliminating a common defense strategy of trying the complaining witness rather than the defendant. The result of this strategy was harassment and further humiliation of the victim as well as discouraging victims of rape from reporting the crimes to law enforcement authorities.'" Commonwealth v. Joyce, 382 Mass. 222, 228 (1981), citing State v. Williams, 224 Kan. 468, 470 (1978). "The law's policy is to scrutinize a proposed question even remotely connected with the complainant's sexual conduct, to ensure that the answer will bear sufficiently on a material issue to justify its being put into evidence." Commonwealth v. Shaw, 29 Mass. App. Ct. 39, 44 (1990). The defendant must file a written motion, and provide an *in camera* offer of proof to the court. The court may exclude evidence otherwise admissible under the statute if the defendant does not comply with the procedural requirements. See Commonwealth v. Gauthier, 32 Mass. App. Ct. 130, 133 (1992) (omission of written notice is not to be treated as a trifling matter). Even upon evidence that the victim experienced prior sexual abuse, admissibility in trial of the defendant is still bound by limits of relevancy, Commonwealth v. Ruffen, 399 Mass. 811, 816 (1987), and a judge must also determine whether the probative value is sufficient to outweigh its prejudicial effect to the victim. See *Mass. Guide to Evidence*, § 412, Notes. Unless the defendant convinces the court after such a hearing that a victim's prior sexual conduct is relevant to her extraordinary knowledge of sexual acts or terminology, bias, a motive to lie, or to misidentification, the general rule of exclusion holds. See Commonwealth v. Ruffen, 399 Mass. 811, 814-817 (1987), and Commonwealth v. Joyce, 382 Mass. 222, 228 (1981).

### **III. Argument**

The Commonwealth respectfully moves this Honorable Court to prohibit the defendant from referencing the victim's prior sexual experiences. The defendant has not complied with the procedural requirements of M.G.L. c. 233, § 21B, and even if the defendant had filed a written motion and requested the appropriate hearing, he cannot show that the potential information at issue falls within the limited recognized exceptions to exclusion under Rape Shield law. The Commonwealth anticipates that the only basis on which the defendant could foreseeably offer information of the alleged victim's prior sexual experiences is under the guise that such prior abuse is probative of "misidentification" of the defendant for the crimes charged in this case. This argument fails, however, because there is no basis to believe the defendant has been misidentified by the alleged victim with respect to the crimes for which he is charged. Additionally, evidence of D.R.'s previous victimization would not be admissible to rebut an inference that she possesses "extraordinary knowledge" about sexual matters which could only have been acquired through conduct involving the defendant, as no such inference or extraordinary knowledge exists.

- A. D.R.'s prior victimization by a third party is irrelevant and inadmissible because there is no evidence that the allegation against the third party is false, nor is there any evidence to suggest that D.R. is confused or conflating these two separate episodes of abuse.**

Massachusetts courts generally do not allow prior sexual assault allegations to be admitted against the complainant to impeach their credibility. See Commonwealth v. LaVelle, 414 Mass. 146, 151 (1993). In Commonwealth v. Bohannon, 376 Mass. 90, 95 (1978), the court identified a narrow exception to this rule: a prior allegation of a sexual assault may be used to impeach the complainant in a rape case where the defendant offers proof indicating that independent third party records concluded that the prior allegations were made and were, in fact, untrue. In subsequent cases, courts of the Commonwealth have consistently and repeatedly held that "evidence that the victim failed to pursue a claim is not evidence that the claim was falsely made". See Commonwealth v. Hrycenko, 417 Mass. 309, 319 (1994). In the case at bar, the

defendant cannot offer any proof or suggestion whatsoever that D.R.'s prior allegations against the third party were false.

Additionally, there is no evidence to show that D.R. could have confused or conflated the two different sexual assaults based on their circumstances or that she has any history of psychiatric problems that could affect her ability to perceive or recall events. Compare Commonwealth v. Baxter, 36 Mass. App. Ct. 45, 51 (1994) (exclusion of evidence of prior sexual assault not required under rape-shield statute when defense attempted to show that complainant had previously been raped and experienced psychiatric problems, and that because of those problems and the many similarities of that trauma to the present incident, she was unable to distinguish between the two situations.). In Baxter, the victim presented with a combination of psychiatric ailments including suicidal ideation, flashbacks to the assault, and auditory hallucinations Id., at 48. Based on this and the strikingly similar allegations involved,<sup>1</sup> the Court found on review that the defendant should have been entitled to use evidence of the victim's prior rape when her consent was at issue and the defendant's theory was that she had consented to this subsequent sexual encounter but could no longer distinguish that from an earlier rape. Id., at 46-49, 51. Notwithstanding the unique fact pattern in Baxter, evidence of prior sexual assaults is generally not admitted. See Commonwealth v. Syrafos, 38 Mass. App. Ct. 211, 215-216 (1995) (defendant failed to show that disclosure of privileged records to trier of fact or mental health expert was necessary to defendant's fair trial; although records showed victim suffered from psychological problems such as depression, suicidal ideas and posttraumatic stress, nothing in the records supported defense theory that the victim, after consenting to sexual intercourse, might have suffered a "flashback" and therefore believed she was raped, or that the victim, because of her psychological problems, was not able to perceive, recollect, and recall the incident in question.).

In this case, the defendant has made no showing that this level of similarity exists with the victim's prior assault that would warrant admission of such evidence, and there is no evidence to suggest that D.R. suffers an ailment that would call into question her ability to distinguish

---

<sup>1</sup> In Baxter, the victim was reportedly raped a year earlier, and like the charged allegation, it occurred at a party where beer and drugs were available, by an assailant who, like the defendant, was named Eric, and the assault had taken place in an upstairs bedroom of a duplex house with other people downstairs.



between situations or perceive, recollect, and recall the defendant's assault distinctly. Specifically, the alleged victim, D.R., has never wavered that the defendant is the perpetrator of the sexual abuse she suffered at 12 Mora Street after she turned 15 years old. She describes in detail the sexual acts that the defendant performed, the words he used, and the locations of the assaults, and she also offers a narrow window of the timing in which the abuse occurred (over a period of a few months). Additionally, she specifies the details of the prior abuse that are separate and distinct from the defendant's, and offers differentiating physical descriptions of her abusers and specifically identified that the third party's occurred prior to her having met the defendant. Finally, D.R.'s allegations regarding the defendant are sufficiently detailed, more serious in nature, and of greater frequency than that she experienced previously. Because there is an insufficient basis to conclude that D.R. is conflating her experiences, the only purpose of the defendant's proposed evidence would be to attempt to improperly argue third party culprit evidence to distract the jury from D.R.'s identification of the defendant as the perpetrator.

**B. D.R.'s prior victimization is irrelevant and inadmissible because it violates Rape Shield and does not fall within a Ruffen exception.**

Commonwealth v. Ruffen outlines an exception to the rape shield statute in that evidence of the previous victimization of the child may be admissible to rebut the inference that a child's "extraordinary knowledge" about sexual matters could only have been acquired through conduct involving the defendant. 399 Mass. 811, 814-815 (1987); Commonwealth v. Gauthier, 32 Mass. App. Ct. 130, 133 (1992) (if a child displays knowledge of sexual matters beyond his years, evidence of prior sexual experience may be received to show that the knowledge could have been acquired from occasions other than the one complained of involving the defendant). Where a defendant can show a good faith basis for an inquiry, Ruffen authorizes a voir dire to determine whether the victim had been sexually abused in the past in a manner similar to the abuse in the instant case, which could explain the victim's *precocious familiarity* with particular terms and acts. Id., at 815-816 (emphasis added); see also Commonwealth v. Owen, 57 Mass. 538, 544 (2003) (victim alleged abuse by defendant between 5 and 9 years old and claimed her 4 year delay in reporting was caused by her lack of understanding of what the defendant was doing to her).

The case at bar is distinguishable from Ruffen because D.R.'s account of the abuse at age 15 demonstrates her sexual knowledge is not "extraordinary", which Ruffen requires. Instead, D.R. utilizes sexual terminology and awareness that is appropriate for her age. In Commonwealth v. Rathburn, the court held that the testimony of the victim, who was 13 at the time of trial and 10 years old at the time of the alleged sexual assaults, did not demonstrate "extraordinary knowledge" of sexual acts or sexual matters in general, where the victim used such terms in her testimony as "penis," "butt," "hard," and "rubbing." 26 Mass. App. Ct. 699, 708 (1988); see Gauthier, 32 Mass. App. Ct. at 130-134 (victim, who was 13 years old at the time of abuse and 14 at trial, used words such as "dick," "butt", "bum", and "white stuff" to describe what had transpired and this could not reasonably be viewed as 'extraordinary'); see also Commonwealth v. Savage, 51 Mass. App. Ct. 500, 504 (2001) (none of the language victim used to describe defendant's abuse reflected precocious sexual sophistication for a child of his age at 10 years old; he used plain, ordinary terms like "rubbing," "suck," "penis," "white stuff," and "tush" to describe the sexual acts); Commonwealth v. Boyd, 55 Mass. App. Ct. 1114 (2002) (the act of kissing or the phrase "give me some tongue" is by no means necessarily beyond the base of knowledge of a 12 year old); Commonwealth v. Costello, 36 Mass. App. Ct. 689, 695 (1994) (a 14 year old testifying when she is 18 (almost 19) years old may be assumed to have sufficient knowledge about sexual matters to discuss intercourse).

There is no evidence to support that D.R.'s prior sexual abuse satisfies the Ruffen exception, which requires extraordinary knowledge. In the present case, the language used by the victim, such as "private", "vagina part", "boobs", "thing", and "dick", is not extraordinary for a 15 year old. As such, there is no viable risk that the jury may conclude that D.R.'s account of abuse by the defendant must have occurred based on her sexual knowledge and terminology as compared to her age. Unlike Ruffen and Owen, D.R.'s account of the defendant's abuse and her age at the time of the defendant's abuse does not beg the jury to weigh whether she'd lack sexual knowledge but for the defendant's abuse; indeed, there is no basis to believe she lacks knowledge of sexual matters not ordinarily possessed by someone her age. Therefore, the proposed evidence of prior sexual abuse has limited if any probative value compared with its prejudicial effect.

**IV. Conclusion**

For the reasons argued above, the Commonwealth respectfully moves this Court to preclude reference to any alleged sexual experience of the victim with individuals other than the defendant.

Respectfully submitted  
For the Commonwealth,

RACHAEL ROLLINS  
DISTRICT ATTORNEY

Date: 11/5/19

By:

  
Kyle Siconolfi  
Assistant District Attorney

Volume: I  
 Pages: 1-61  
 Exhibits: None

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUFFOLK SUPERIOR COURT

\* \* \* \* \*

COMMONWEALTH OF MASSACHUSETTS  
 Plaintiff

v.

Docket Nos. 2017-00800  
 2016-00862

EDEN C. JACQUES  
 Defendant

\* \* \* \* \*

BEFORE THE HONORABLE ROBERT L. ULLMANN

APPEARANCES:

For the Commonwealth:

Suffolk County District Attorney's Office  
 One Bulfinch Place  
 Boston, MA 02114  
 (617) 619-4000  
 By: Kyle E. Siconolfi, Esq.

For the Defendant:

Swomley & Tennen, LLP  
 50 Congress Street, Suite 600  
 Boston, MA 02109  
 (617) 227-0443  
 By: Eric B. Tennen, Esq.

Date: November 12, 2019  
 Boston, Massachusetts

Camille Macomber, CSR, RPR  
 Approved Court Transcriber

1 certain portions of it and then give the defense enough of an  
2 opportunity to review it.

3 MS. SICONOLFI: Mm-hmm, yes, sir.

4 THE COURT: All right. So Docket 122, Evidence of Other  
5 Witness Sexual Experiences.

6 MR. TENNEN: I didn't have time to write something, but  
7 this one I have a lot to say about.

8 THE COURT: Okay. All right. Well, again, the law is  
9 fairly clear in general terms about what's admissible and  
10 what's not admissible under the Rape Shield Statute. The  
11 devil is often in the details.

12 What's the defense's position on this?

13 MR. TENNEN: Sure. And I think, Your Honor, I just have  
14 a little bit of background that you haven't heard yet.

15 THE COURT: That's fine.

16 MR. TENNEN: So in the course of investigating this  
17 case, when they were doing the S.A.I.N interview with DR and  
18 JS, one or both of them towards -- at some point was  
19 interviewed. Towards the end of the interview mentioned that  
20 similar things that happened with another individual named  
21 Maurice Berry. So these people are being interviewed in 2016  
22 for this case, and they mentioned things that happened with  
23 Maurice Berry that predate the allegations in this case. So  
24 that's the individual we're talking about with this motion.

25 THE COURT: Okay.

1           MR. TENNEN: So they are then interviewed about that  
2 case. So there are S.A.I.N interviews for allegations that  
3 they both make against Maurice Berry. There's even, at least,  
4 references in a DCF report. So we have that. So there's no  
5 dispute that there's a prior allegation. So we're not  
6 fishing, we don't have to voir dire anyone to see if they made  
7 any prior allegations. We have that.

8           What you have when they talk about that, Maurice Berry  
9 was related to one of their mothers, I think, something like  
10 that, it was a cousin or an uncle or something like that who  
11 was in the household when they were all there at some point.  
12 Again, predating all of this.

13           When they talk about that, they describe what they say  
14 Maurice Berry did to them almost identically to what they say  
15 Mr. Jacques did to them. And there are some things that  
16 really stick out. So it's not some just general allegations  
17 of assault. They talk about the same MO, walking into the  
18 room while they're sleeping, pulling pajamas down, rubbing  
19 thighs. They talk about Maurice Berry having exposed himself  
20 in the kitchen to them, just kind of hanging out without any  
21 warning, which are allegations they allege to make against  
22 Mr. Jacques.

23           They talk about -- this one is very specific, so there's  
24 a lot of talk about phones and what's being used or what's  
25 being done with phones. And they both say that Maurice Berry



1 propositioned them -- sorry this is not about phones. That  
2 Maurice Berry propositioned them to have sex for \$20, that he  
3 would talk about that.

4 And they also have made the same allegations against  
5 Mr. Jacques, that he would ask them to take naked pictures for  
6 10 or \$20. So it's not phones, but propositioning or offering  
7 money in exchange for acts.

8 So all of that comes out. So we now have allegations  
9 against Maurice Berry that are very similar to the allegations  
10 that eventually come out against Mr. Jacques having predated  
11 the allegation against Mr. Jacques.

12 So the reason I think it's relevant in this case, and I  
13 suppose to disclose a little bit of my theory on the motion so  
14 it won't be too big of a surprise, that you will hear that --  
15 well, most all of the complainants, but specifically DR, and  
16 to much of the same extent, JS, they were not big fans of  
17 Mr. Jacques. He was dating their aunt's mother. So these  
18 aren't even Ms. Baldwin's children. These are Ms. Baldwin's  
19 sister -- I'm sorry, JS was the child and DR is the cousin --  
20 DR is the child and JS is the cousin.

21 Anyway. So he wasn't related to them, he wasn't, you  
22 know, anyone to them other than someone that was dating their  
23 aunt who lived in the house. And for a series of -- for  
24 over -- for a significant amount of time, enough that a lot of  
25 things happened, they did not get along, they fought. You

1 just heard an allegation regarding an incident with him and  
2 the son, which has nothing to do with this case, but just sort  
3 of evidence of kind of the chaos there.

4 And at some point what kind of triggers this being told  
5 to the authorities is -- it's not totally clear, but I guess  
6 in light most favorable to the Commonwealth, that DR and JS  
7 either see or are told about a video on a phone that SS is on  
8 a video on Mr. Jacques' phone. There's a video of him doing  
9 something to her on the phone. So they sort of are told or  
10 see this video and that's what kind of triggers them  
11 eventually going to authorities about this.

12 And one more thing. I'm sorry there's a lot of context.  
13 In this case, you know one of the allegation involves KW, also  
14 predated the other allegations by a couple of years. So that  
15 supposedly took place in 2014, it sort of lays dormant for a  
16 while, and then when this investigation surfaces, they bring  
17 that back in. But in the meantime, KW's mother had talked to  
18 her sister about it, and the two of them had talked to these  
19 girls about it. So there's evidence that they had talked to  
20 them about something that may have happened with KW and to be  
21 suspicious of Mr. Jacques and be wary of him.

22 So this happens, they see or hear something about the  
23 phone and they make a plan -- they say, "We can make a plan to  
24 call the police while he's sleeping for them to come."

25 And then they begin describing what he did almost

1 exactly the same way that they're saying Maurice Berry did  
2 this to them.

3 So why does it come in? It's sort of Commonwealth v.  
4 Ruffin or Jason. It's not that these are girls who are so  
5 young that they might not otherwise know these terms. I  
6 understand they're teenagers. But it's in the MO, is that  
7 they have a way of wanting to get him out of the house, and to  
8 do that, they have to make a credible allegation. So they are  
9 able to take their own credible allegations, what has happened  
10 to them, and use that to say he did that because they know  
11 that that will work. They know that that's something they can  
12 draw from their own experience.

13 So it's not even -- it's almost an overlay of the -- the  
14 allegations are almost the same. Not exactly the same, but  
15 pretty close to be being exactly the same when you have the  
16 different ways in which they're saying he did these things  
17 that are very different from themselves. Sneaking into the  
18 room while they're sleeping and being in the kitchen, then  
19 asking for money or offering money in exchange for services.

20 I think I have to be able to ask them about what  
21 happened with Maurice Berry, because if I'm telling the jury  
22 this didn't happen, there's --

23 THE COURT: No, I understand the --

24 MR. TENNEN: This is not a mistake in identification;  
25 this didn't happen. Where did they learn to talk about this?

1 Because they can draw from their own experience that they have  
2 credibly reported at the same time, that happened to them just  
3 before --

4 THE COURT: I understand. This is not an unconscious  
5 conflation of activity.

6 MR. TENNEN: Right.

7 THE COURT: It's an alleged, obviously arguably, it's a  
8 motive to get the defendant out of the house and --

9 MR. TENNEN: Or even to put -- not even to necessarily  
10 to put it in those terms, to put it in a somewhat  
11 understandable term, it's a fear of him because of what  
12 they've heard and what they may have seen. So a fear of him  
13 doing worse, they get him out of the house for that reason.

14 THE COURT: I see.

15 MR. TENNEN: So they draw from what has happened to them  
16 to be able to -- because they're afraid it might happen to  
17 them again with him based on what they've heard and were told  
18 about.

19 THE COURT: I see. So the argument is that the most  
20 credible way to make false allegations is to base it on things  
21 that actually happened to you so that it's, again --

22 MR. TENNEN: It's --

23 THE COURT: -- it's easier to fake it if there's some  
24 degree of truth in what you're saying.

25 MR. TENNEN: Right.

1 THE COURT: That's the argument.

2 MR. TENNEN: Right. I mean, the other argument, and I  
3 can't say I have a good faith basis to make this, so I'm --

4 THE COURT: Then I wouldn't make it.

5 MR. TENNEN: No, what I'm saying is, you know, you could  
6 say, "Well, those are false allegations against Maurice Berry,  
7 so they're making the same false allegations here. And that  
8 would make it admissible also. I can't say one way or the  
9 other, I just know that they were made and investigated and I  
10 think have even been charged. But in any event...

11 THE COURT: So what's the Commonwealth's view of what's  
12 admissible and what's not with regard to the alleged victims'  
13 interaction with Mr. Berry?

14 MS. SICONOLFI: So I think there are circumstances  
15 and -- there are circumstances that are not present in this  
16 case where that type of information could be admissible. The  
17 case law has carved out exceptions that in some part Your  
18 Honors has discussed, I think counsel has touched on it. One,  
19 undergo (indiscernible - 11:56:37) where there was evidence  
20 that a prior allegation was false. That's simply not  
21 available in this case, so I don't think it would be  
22 admissible under (indiscernible - 11:56:46) in that capacity.  
23 Aside from that, with respect to what motive, counsel can  
24 allege these (indiscernible - 11:56:55) had, and what Your  
25 Honor touched on, like isn't the safest lie to tell the one



1       that's partially true?

2               THE COURT:   Right.

3               MS. SICONOLFI:   That's available to them, as counsel  
4       just described, from their prior awareness -- what he alleges  
5       is their prior awareness of allegations involving KW.

6               So drawing this third party -- drawing this other person  
7       who sexually abused them isn't necessary to that, it's all  
8       available to counsel through evidence and the witnesses  
9       expected in this trial.

10              Additionally, there's --

11              THE COURT:   So I'm not quite following you in terms of  
12       what are you saying would be admissible and what would not be  
13       admissible with regard to the actions of Mr. Berry?

14              MS. SICONOLFI:   I don't think anything, Your Honor.   I  
15       think it's completely irrelevant to this particular case.   I  
16       do think that counsel can accomplish that motive, the source  
17       from which these girls draw the allegations that prior  
18       familiarity with KW's allegations.   Right.   I think that he's  
19       not undercut, the defense is not made and available to him  
20       because he has that information and the evidence in this case.  
21       Maurice Berry has absolutely nothing to do with that.

22              With respect to Maurice Berry, you have information that  
23       a third party, over a year prior, who's described by name in a  
24       different capacity, by different physical description and with  
25       differing degrees of contact and conduct, you know, that don't

1 account for like an unusual sexual awareness or knowledge in  
2 the age of the alleged victim here. The allegations are just  
3 totally distinct. So I think the prejudice here isn't  
4 outweighed by any probative value because it's not one of  
5 these circumstances where allegations about a third party do  
6 have enhanced --

7 THE COURT: So which of the four alleged victims, as to  
8 which of them is there -- have any of them admitted that  
9 Maurice Berry sexually abused them?

10 MS. SICONOLFI: Yes. Counsel is correct that when DR  
11 and JS -- well, when DR was interviewed with respect to this  
12 investigation for Mr. Jacques, I believe the interviewer in  
13 the course of a forensic interview asked something to the  
14 effect of like, "Had anything like this ever happened before?"  
15 And she describe that Maurice Berry, when she was around 13  
16 years old and living in a different house with different  
17 people, with someone she met, he was an older guy and he was  
18 creepy. He asked to have sex with her. He touched her leg.  
19 He touched other parts of her body in an indecent manner. And  
20 that at one point he was seen to have exposed his penis to  
21 people living in the house. That's the end of the conduct  
22 that's alleged with respect to Maurice Berry.

23 Whereas here, DR has expressed that it went far beyond  
24 the similarities that counsel is drawing between what she  
25 describes for Mr. Berry and Mr. Jacques.

1           THE COURT: Again, I'm not following you in terms of  
2 what is -- so are you saying that the awareness of that  
3 conduct by Mr. Berry is admissible or is not admissible?  
4 That's not covered --

5           MS. SICONOLFI: I don't think it is. I'm failing to  
6 understand how it is admissible. How it would be admissible.  
7 It's irrelevant.

8           THE COURT: So it seems to me, Mr. Tennen, that in any  
9 case that -- I mean, to me, it would be a huge loophole in the  
10 Rape Shield Statute if any defendant could use evidence of  
11 rape or other sexual assault by someone else and bring that in  
12 in the guise of saying that this alleged victim had decided to  
13 use that experience as a way of bringing a false charge. And  
14 that would be applicable in every rape case.

15          MR. TENNEN: Well, it's not. First of all, Rape Shield  
16 is about -- this isn't really Rape Shield, this is about  
17 relevance. And what I mean by that is Rape Shield is when  
18 you're talking -- when you're making implications of  
19 promiscuity or that someone is sexually active. Rape Shield  
20 is designed to keep that stuff out. And I'm not making  
21 allegations of promiscuity or sexual activity; I'm saying you  
22 yourself have reported being sexually abused before. So  
23 really it's not Rape Shield, it's relevance. Is it relevant.

24          And it's not -- it wouldn't open up in every case  
25 because the difference here is that they are --

1           THE COURT: But Bohannon is a -- it's a narrow  
2 exception. It's he made a claim before and it was a false  
3 claim.

4           MR. TENNEN: No, I understand that. But it's more  
5 similar than the District Attorney is explaining.

6           So in both cases they make allegations that they were  
7 offered money, coincidentally, the same amount of money, \$20,  
8 for a sexual act. In both cases they say that the two men  
9 exposed themselves in the kitchen. So they were sitting  
10 there, they turned around and all of sudden his penis was out  
11 against both of them. In both cases they say that the two men  
12 came in while they were sleeping, so they didn't know what was  
13 happening and they just woke up to the two men pulling their  
14 pants down while they were sleeping.

15           In both cases they talk about either during that time or  
16 other times how both men would rub their thighs in effort to  
17 sort of use that to start the process of trying to assault  
18 them. Those are identical.

19           So I'm not saying you always get to say that someone --  
20 you were abused before, but when the story you're saying is  
21 almost identical to an allegation that came out or that  
22 happened to you just years prior to this or not even that long  
23 prior to this, and I, as a defense attorney, am bringing forth  
24 a theory saying that you are not being truthful about this and  
25 where do you get this story from? It's not a run of the mill

1 story. It's not even what KW says happened.

2 They weren't told details about what KW claimed  
3 happened, they were just told that there was something  
4 inappropriate, they should be aware of him. So they can't  
5 even use that as a well of -- an accusation to use.

6 So it's not every case, this is a very specific case  
7 because it is so similar and because, my theory is, that  
8 they're not being truthful in this case about these  
9 allegations.

10 THE COURT: Do the motions set forth the detail of the  
11 alleged interactions with Maurice Berry? I guess you're  
12 saying --

13 MR. TENNEN: I didn't have time to write it, but I have  
14 a transcript of the S.A.I.N interview with JS. I'm still  
15 working on a transcript with the other one, but I have, at  
16 least, the police report that talks about a summary of some of  
17 the things DR said about Maurice Berry, and then I have my own  
18 notes where I'm getting most of -- having listened to the  
19 interview itself. I can make those available to the Court.

20 THE COURT: So the purpose of this would be impeachment  
21 of DR and JS?

22 MR. TENNEN: Only, yes. Only that.

23 MS. SICONOLFI: But how is it impeachment? They've not  
24 shown any false allegations or untruthful in the past. What  
25 are they being impeached over? They're being asked to express



1 on a sexual abuse they suffered previously. Counsel can't  
2 confirm or deny that it happened. It's just spec -- it's  
3 distracting, it's misleading to the jury. It's pointing the  
4 finger at somebody else who is not in the room. And without  
5 fitting into the narrow exceptions that case law says that  
6 might be permissible because it has enhanced probative value  
7 on the issue of something like consent, which isn't in play  
8 here. On the issue of something like misidentification for  
9 someone who generally suffers from ailments that make it  
10 impossible for them to distinguish what are (indiscernible -  
11 12:05:31) and what are events.

12 Counsel is essentially using the fact that in describing  
13 their experiences, the girls used similar language with  
14 respect to some of the conduct for both individuals. It's  
15 just -- it's too much into like a collateral matter, I think.  
16 I don't see how that's impeachment in this particular case.

17 MR. TENNEN: It is more than impeachment.

18 THE COURT: How is it more than impeachment?

19 MR. TENNEN: Well, I guess it's impeachment in the  
20 general sense, you know, it's evidence that tends to show a  
21 witness is or is not being truthful. I guess in that sense,  
22 it's impeachment. But it's in the context, it's to explain  
23 why they're not being truthful. How they could get to the  
24 point where they're making these allegations, where they can  
25 get that knowledge from.

1 MS. SICONOLFI: We're talking about a 15-year-old and a  
2 16-year-old girl and the conduct they describe by Mr. Jacques  
3 is not beyond the realm of what would be available to them in  
4 their everyday life in terms of extraordinary knowledge of  
5 sexual acts or --

6 THE COURT: I understand. It's not -- it's not the  
7 facts of Bohannon, it's not the facts of Ruffin, it's not the  
8 facts of Baxter. On the other hand, it's in no way --  
9 obviously, there's a policy in the Rape Shield Statute not to  
10 in any way unnecessarily force the alleged victim to have to  
11 dredge up yet another victimization.

12 On the other hand, as Mr. Tennen says, this is not --  
13 this does connect in some way to the defense theory of the  
14 case, and it clearly is not being done to suggest that JS and  
15 DR are promiscuous.

16 MR. TENNEN: Or sexually active, right.

17 THE COURT: Or sexually active. I mean, the question  
18 for me is, are there a limited number of details such as  
19 saying he offered me \$20 for sex where they can -- the defense  
20 should have the opportunity to say that that was something  
21 that Berry did, this defendant didn't do it, and because it  
22 happened to them, it's easy for them to say that this  
23 defendant did it. The question is, in trying to balance the  
24 defendant's right to present his defense in the Rape Shield  
25 Statute, is there certain conduct or certain interactions with

1 Berry that should be admissible.

2 I'm not going to rule as I sit here now. On the other  
3 hand -- well, it's highly unlikely that we're going to do  
4 openings tomorrow.

5 MR. TENNEN: I was not told that was even a possibility,  
6 so I was hoping we don't do openings tomorrow.

7 THE COURT: I will be thrilled if we get a jury in one  
8 day tomorrow. I'm hoping we do, but -- well, I think --

9 MR. TENNEN: Does Your Honor want --

10 THE COURT: Let me take the documents.

11 MR. TENNEN: So I have a transcript of the S.A.I.N  
12 interview with JS, and then I just have the police report with  
13 DR, just they're capturing what happened at the S.A.I.N  
14 interview. I don't have that transcript yet. So I can pass  
15 those up.

16 MS. SICONOLFI: And I understand Your Honor's reserving,  
17 but one further point on something that counsel raised.

18 THE COURT: Sure.

19 MS. SICONOLFI: I believe it was they know it will work.  
20 Right. They want Mr. Jacques out of the house, so they know  
21 that these allegations --

22 THE COURT: Well, they're afraid of him and, yes, they  
23 want him out of the house, they want him locked up. Whatever.  
24 Right.

25 MS. SICONOLFI: They never even reported anything from

1 Maurice Berry until they were interviewed for Mr. Jacques.  
2 There's no sort of ah-hah we got him inference that can be  
3 reasonably drawn from this that enhances probative value to  
4 the point where it outweighs prejudice.

5 THE COURT: I'm just not following what you're saying.  
6 In other words, the fact that they don't bring this up until  
7 the S.A.I.N interview, what's the relevance of that?

8 MS. SICONOLFI: I believe counsel's argument was it  
9 worked before when we raised the alarm about somebody.

10 THE COURT: No, no, no, what I understand the argument  
11 is, it's very different than that. It's -- you know, and  
12 obviously, from the Commonwealth's perspective, it's an  
13 argument that's being created to try to take maximum advantage  
14 of certain other evidence. But as I understand it, the  
15 argument is, we are -- we have a motive to falsely accuse this  
16 defendant, and so what we're going to do is we're going to  
17 make up stuff that happened, and the best way to sound  
18 convincing is to blame him for stuff that actually happened to  
19 us that someone else perpetrated on us, because then it will  
20 have the ring of truth because it's easier for us to lie about  
21 it because it actually did happen to us, it was just someone  
22 else that did it, not Mr. Jacques.

23 MS. SICONOLFI: And I think that fully consumes the  
24 protection that Your Honor described from the Rape Shield  
25 Doctrine. I think that would render that argument available

1 in all cases where someone had prior sexual abuse.

2 THE COURT: That's my concern -- that's my basic concern  
3 with this argument that even putting aside whether or not  
4 there's -- I mean, I think we're all in argument here the  
5 purpose of this is not to suggest that these alleged victims  
6 are promiscuous. So that whole part of the statute, I don't  
7 think, is applicable here. The part that I think is  
8 applicable is what you're saying, what I said a short while  
9 ago, which is that this seems to open up a loophole that could  
10 potentially swallow up the whole Rape Shield Statute because  
11 every defendant in every case --

12 MS. SICONOLFI: It doesn't just stop the promiscuity, is  
13 I guess the point that I'm making of (cross-talking -  
14 12:12:15).

15 THE COURT: No, I understand. That's --

16 MR. TENNEN: I actually think Rape Shield does -- I  
17 mean, that's what it's intended for. This is something that  
18 already comes in, right, prior instances of abuse are relevant  
19 for a whole host of things. So it's not always -- first of  
20 all, you have to actually have a credible --

21 THE COURT: When you say prior instances of abuse come  
22 in, for what purpose?

23 MR. TENNEN: That's Ruffin, that's Bohannon, I mean,  
24 there are instances where it does not come in.

25 THE COURT: Yes, but there are narrow exceptions.

1 MR. TENNEN: But I'm saying, they come in, it doesn't  
2 swallow the rule, they come in for a specific reason when  
3 certain facts are met. First of all, you have to have a prior  
4 evidence of abuse. Most cases you don't, so it's not even an  
5 issue. And then when you do, you have to have a reason to put  
6 it in. So in a lot of cases, it has to be similar. They  
7 won't let it in if one allegation has nothing to do with  
8 other. And here it's lining up again. These are exactly  
9 similar things.

10 The difference is it's not -- I'm not saying it's  
11 specialized knowledge of terms, I'm essentially saying it's  
12 sort of specialized knowledge of an MO, right, a way to talk  
13 about abuse that sounds -- that's believable. So it wouldn't  
14 swallow the rule, you have to have -- it's so narrow of the  
15 circumstances where this would actually arise.

16 MS. SICONOLFI: Are you done?

17 It's so narrow a circumstance where this would be  
18 permissible, right, where --

19 THE COURT: Right, but Mr. Tennen is saying that this is  
20 that rare case where, sadly, the alleged victims in this case  
21 were the victim of similar conduct by someone else during  
22 their childhood.

23 MS. SICONOLFI: But I think that where's it's been  
24 allowed -- it's been allowed on common grounds, for example,  
25 that the jury would think it must have been the defendant



1 because this child would have no knowledge of this unless it  
2 did come true. Right. They're qualified and there are no  
3 exceptions --

4 THE COURT: No, I understand the Commonwealth's position  
5 here, and I have a real concern with creating an exception  
6 that would seem to me to be applicable -- I understand,  
7 Mr. Tennen, you're saying, "Well, no, I'm talking about very  
8 narrow circumstances in this case." But it seems to me that  
9 this is an exception that would be giving many defendants the  
10 opportunity to bring in other sexual contact.

11 MR. TENNEN: It's just that last part. I don't know how  
12 many cases you would have a prior allegation that's similar,  
13 you know, where they're saying the same thing in this case.

14 THE COURT: Let me just give it some more thought.

15 MS. SICONOLFI: And I will add that Mr. Jacques isn't  
16 charged with offering money for sex. We're talking about  
17 other issues that potentially could come up in the case but  
18 are not charges for which he's before the Court. So I just  
19 think it's less vital to his defense when it's not even the  
20 conduct for which he's charged with and --

21 (Simultaneously cross-talking - 12:15:28 p.m.)

22 THE COURT: Well, there's a whole host of --

23 MR. TENNEN: There's a whole host prior bad acts that  
24 they're putting in --

25 (Simultaneous cross-talking - 12:15:36 p.m.)

1           THE COURT: I don't think it's -- I see how the defense  
2 would consider this to be important evidence in the case. So  
3 at this point, I will give counsel an opportunity to be  
4 further heard on it. Let me look at the S.A.I.N interview and  
5 give it some more thought.

6           I will say that, and again I'm not trying to telegraph  
7 how I'm going to rule, but the details here are not -- in  
8 terms of the policy of not -- of avoiding the trauma for an  
9 alleged victim, the details here that I'm considering allowing  
10 are, to me, they are not -- it's not as if I'm going to allow  
11 impeachment about someone who is being repeatedly raped by  
12 someone else, which obviously that's more traumatic than  
13 someone being offered \$20 to perform a sexual act.

14           Obviously, in my view, they are both covered by the Rape  
15 Shield Statute, and I have to see whether there's certain  
16 evidence here where I feel that the defendant's right to  
17 present a defense outweighs the policy in the Rape Shield  
18 Statute.

19           Okay. I guess we saved the most complicated issue for  
20 last, that was not my intention, but --

21           MR. TENNEN: I was going to suggest it if you got to it  
22 earlier.

23           THE COURT: Well, next time maybe interrupt me.

24           MR. TENNEN: No, no, I'm saying if you wanted to hear  
25 that first, I was going to suggest that you save it until the

## C E R T I F I C A T E

I, Camille Macomber, Registered Professional reporter, do hereby certify that the foregoing is a true and accurate transcripts from the audio recording provided to me of the Suffolk Superior Court proceedings in the above-entitled matter.

I, Camille Macomber, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Camille Macomber, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

*Camille Macomber*

12/31/19

Camille Macomber  
Approved Court Transcriber  
Registered Professional Reporter  
15 Court Square, Suite 920  
Boston, Massachusetts 02108  
(617) 755-3068  
Camillemacomber@comcast.net

Date

Proceedings recorded by court recorder. Transcript produced by computer.

Volume: I  
Pages: 223  
Exhibits:  
ID: A-B

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

\* \* \* \* \*

COMMONWEALTH OF MASSACHUSETTS

v.

Docket No. 1684CR00862  
1784CR00800

EDEN JACQUES

\* \* \* \* \*

JURY TRIAL  
(DAY 1)

BEFORE THE HONORABLE ROBERT L. ULLMANN

APPEARANCES:

For the Commonwealth:  
Suffolk County District Attorney's Office  
1 Bullfinch Place  
Boston, Massachusetts 02114  
By: Kyle E. Siconolfi, Assistant District Attorney

For the Defendant Jacques:  
Swomley & Tennen, LLP  
50 Congress Street, Suite 600  
Boston, Massachusetts 02109  
By: Eric Brian Tennen, Esquire

Suffolk Superior Courthouse  
Boston, Massachusetts  
Courtroom 806  
November 13, 2019

NANCY MCCANN, CVR-C.M.  
TRANSCRIBER

I N D E X

	<u>PAGE</u>
JURY IMPANELMENT	11
INDIVIDUAL JUROR VOIR DIRE	23

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
(ID)		
A	Blank Jury Questionnaire	69
B	Three BOP records re seated jurors	69

1 COURT OFFICER: They're ready for us now.

2 THE COURT: Okay. So I'll take a look at the  
3 warrant, it will take us a little while to bring up the  
4 jurors. But before we do that, I just want to say one  
5 more word about the defense purported evidence of the  
6 witness's sexual experience with Maurice Berry and the  
7 rape shield statute. I did take, I did take a further  
8 look at some of the case law on this. I'm not going to  
9 rule on this this morning. What I am going to say is  
10 that if I look at the rape shield statute, if this is  
11 admissible, it's only under the exception for  
12 constitutionally required evidence. It doesn't fall  
13 within one of the other exceptions to the rape shield  
14 statute. And to me, evidence of past sexual conduct has  
15 to be relevant to bias or motive or materially affect  
16 witness credibility and it's also not required for  
17 sufficient other impeachment. Based on what I see at the  
18 moment, I don't see this as evidence of motive or bias.  
19 Obviously, the defense is entitled to pursue the argument  
20 that the alleged victims are framing him because they  
21 want him out of the house, but this evidence, as I  
22 understand it, this is evidence that would purportedly  
23 help these witnesses to lie to police. Somehow, this is,  
24 because they have something else happen to them, that  
25 this helps them tell a better lie to the police. I have



1 trouble seeing the relevance of that. The alleged  
2 victims will testify, it's up to the jury to determine  
3 their credibility. So evidence of something that  
4 purportedly helped them to lie to the police, to me,  
5 seems, I'm skeptical that it's admissible.

6 I will say this, though, I think that if,  
7 Mr. Tennen, if you seek to admit any of this evidence,  
8 the burden is on you to show, you're going to have to,  
9 you're going to have to point to particular evidence,  
10 whether it's in the same report or some other document,  
11 and you're also going to have to show that somehow, the  
12 timing supports its admissibility. So, for example --  
13 because I don't, it seems to me, I just took a brief  
14 look at some of the SAIN interview reports, it seems to  
15 me that some of the statements, the evidence about  
16 Mr. Jacques, was provided before these incidents with  
17 Mr. Berry. So, obviously, those incidents could not  
18 have --

19 MR. TENNEN: No, no, that's not right. This  
20 incident with Mr. Berry happened before. They were  
21 provided this --

22 THE COURT: So, anyway, as I say, I'm not going  
23 to rule on this, but I do think you have to -- I mean,  
24 just by way of example, something I might allow, if  
25 there's conduct by Mr. Berry, particular conduct, and

1 then that becomes a part of the witness's story about  
2 Mr. Jacques, that, to me, is different because then, that  
3 falls within conventional impeachment. In other words,  
4 if you understand what I'm saying, in other words, that's  
5 a, you can look at that as a material omission in a prior  
6 statement, and now suddenly, this detail appears in the  
7 witness's testimony and there's an argument that it  
8 appears because of something that Mr. Berry did.

9 So for the reasons I just said, I'm skeptical  
10 about its admissibility because of the rape shield  
11 statute, and if you want to admit any of that testimony,  
12 you're going to have to really -- you're going to have to  
13 do two things. You're going to have to, first of all,  
14 point to particular evidence and why it's admissible in  
15 terms of the timing or the particular statement or the  
16 particular conduct, and then ideally find me a case or  
17 two under which similar evidence was admissible. I've  
18 looked at numerous cases and I'm not seeing anything  
19 quite like this.

20 So, anyway, that's just to give you some  
21 guidance. I do want to get the jurors up so we can start  
22 the impanelment process.

23 All right, we'll be in recess.

24 (Recess.)

25 (Venire entering at 9:57 a.m.)

C E R T I F I C A T E

I, Nancy McCann, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript, prepared to the best of my ability, from the audio recording produced by Court Personnel of the Superior Court Department court proceedings in the above entitled matter.

I, Nancy McCann, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Nancy McCann, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

*(The proper name spellings herein, unless otherwise indicated, are phonetically spelled.)*

<p>_____</p> <p>Nancy McCann</p> <p>Approved Court Transcriber</p> <p>(781) 264-4764</p> <p>nancy.mccann35@gmail.com</p>	<p style="text-align: center;">3-1-20</p> <p>_____</p> <p>Date</p>
--	--

PLEASE NOTE: THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS UNLESS UNDER THE DIRECT CONTROL AND\OR DIRECTION OF THE CERTIFYING TRANSCRIBER.

Volume: IV  
Pages: 227  
Exhibits: 4-10  
ID: F-G

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

\* \* \* \* \*

COMMONWEALTH OF MASSACHUSETTS

v.

Docket No. 1684CR00862  
1784CR00800

EDEN JACQUES

\* \* \* \* \*

JURY TRIAL  
(DAY 4)

BEFORE THE HONORABLE ROBERT L. ULLMANN

APPEARANCES:

For the Commonwealth:  
Suffolk County District Attorney's Office  
1 Bullfinch Place  
Boston, Massachusetts 02114  
By: Kyle E. Siconolfi, Assistant District Attorney

For the Defendant Jacques:  
Swomley & Tennen, LLP  
50 Congress Street, Suite 600  
Boston, Massachusetts 02109  
By: Eric Brian Tennen, Esquire

Suffolk Superior Courthouse  
Boston, Massachusetts  
Courtroom 806  
November 19, 2019

NANCY McCANN, CVR-C.M.  
TRANSCRIBER

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
D [REDACTED] [REDACTED]				
(By Ms. Siconolfi)	4		88	
(By Mr. Tennen)		36		
DETERMINE. JAMES MORRISSEY				
(By Ms. Siconolfi)	103			
(By Mr. Tennen)		125		

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
4	Photograph of 12 Morris Street	36
5	Photograph of cell phone, formerly E for ID	117
6-7	Photographs of damaged cell phone	120
8	Photograph of cell phone interior	121
9	Miranda Form	122
10	Phone components	125
(ID)		
E	Cell phone	34
F	Transcript of D [REDACTED] [REDACTED]'s SAIN interview (Impounded)	84
G	Audio CD of D [REDACTED] [REDACTED]'s SAIN interview (Impounded)	156

P R O C E E D I N G S

Tuesday, November 19, 2019

(Court in session at 9:39 a.m.)

(Jury present.)

THE CLERK: Good morning, Your Honor.

THE COURT: Good morning.

THE CLERK: The matter before the Court,  
Commonwealth versus Eden Jacques, Docket Number 16-862,  
Docket Number 17-800. Defendant is present represented  
by Attorney Eric Tennen, and for the Commonwealth,  
Assistant District Attorney Kyle Siconolfi. All 15  
jurors are present. Trial resumes.

THE COURT: Good morning, jurors.

JURORS: Good morning, Your Honor.

THE COURT: Once again, I want to thank you for  
being so conscientious in your jury service. I know you  
were all here either early or within a few minutes of  
9 o'clock. The case remains on track, and I have just  
one question, I think you know what it is, did any of you  
between the end of court yesterday and this morning fail  
to follow my instructions not to discuss the case and not  
to do any research about the case?

I see no show of hands and only negative head  
nodding, so we will proceed.

Ms. Siconolfi, the Commonwealth may call its



1 next witness.

2 MS. SICONOLFI: Thank you, Your Honor. The  
3 Commonwealth calls D [REDACTED] [REDACTED]

4 COURT OFFICER: Please stop right here, raise  
5 your right hand and face the Clerk.

6 THE CLERK: Do you promise that you will tell  
7 the truth and that you won't tell any lies?

8 THE WITNESS: Yes.

9 THE CLERK: Please have a seat.

10 THE COURT: Good morning.

11 You may proceed.

12 MS. SICONOLFI: Thank you, Your Honor.

13 [REDACTED] [REDACTED], Sworn

14 DIRECT EXAMINATION

15 (BY MS. SICONOLFI)

16 Q Good morning.

17 A Good morning.

18 Q Would you please say your full name.

19 A D [REDACTED] [REDACTED]

20 Q And can you spell that for me, please?

21 A D [REDACTED], [REDACTED].

22 Q And Ms. [REDACTED] how old are you?

23 A 18.

24 Q What is your date of birth?

25 A 01/29/01.

1 Q What town do you live in right now?  
2 A Fall River.  
3 Q Are you living with a family member?  
4 A Yes.  
5 Q Who is that family member?  
6 A My aunt.  
7 Q Does anyone else live at that house?  
8 A And my little cousins.  
9 Q About how many?  
10 A Three.  
11 Q Did you grow up in Boston?  
12 A Yes.  
13 Q You grew up in Boston, but you now live in Fall River?  
14 A Yes.  
15 Q About how many different places have you lived while you  
16 were growing up?  
17 A About four, I could say.  
18 Q Is that towns or different houses?  
19 A Houses.  
20 Q Did you go to school in Boston?  
21 A Yes.  
22 Q Where do you remember going to school?  
23 A I went to the Charter, I went to the Pilot, and I went to  
24 City on a Hill.  
25 Q Was City on a Hill for high school?

1 A Yes.

2 Q Did you finish high school?

3 A No.

4 Q What's the last grade that you did?

5 A Eleventh.

6 Q How about now, are you thinking about going back to high  
7 school?

8 A Yes.

9 Q Why do you want to go back?

10 A So I can get my education.

11 Q Who is your mother?

12 A Shantia [REDACTED].

13 Q Is she someone you talk with now?

14 A Sometimes.

15 Q When is the last time that you lived with your mom?

16 A When I was 15.

17 Q What about your dad, is he someone you talk to?

18 A Sometimes.

19 Q What's his name?

20 A Leroy Frederick.

21 Q Do you have any siblings?

22 A Yes, I do.

23 Q Who are your siblings?

24 A My little sister, S[REDACTED], my little sister, Shalaya, and  
25 my brother, James.

1 Q Do you remember how old they are?

2 A Shalaya, I think Shalaya is six now. S [REDACTED] is 11, and  
3 my brother is 19.

4 Q And you said your brother's name is James?

5 A Yes.

6 Q Is there another name that you call him sometimes?

7 A Dimari.

8 Q When is the last time you lived with your sister, S [REDACTED]?

9 A When I was on Morris Street.

10 Q About how long ago was that?

11 A I think I could say three years ago, I guess.

12 Q So at least a few years?

13 A Yeah.

14 Q What about your sister, Shalaya?

15 A Same with her, I lived with her on Morris Street.

16 Q So you haven't lived with her for a few years?

17 A No.

18 Q And what about your brother, James?

19 A Same thing.

20 Q You mentioned that you lived on Morris Street at some  
21 point?

22 A Yes.

23 Q Do you remember how old you were when you lived on Morris  
24 Street?

25 A 15.

1 Q Do you remember what grade you were in?

2 A Ninth grade.

3 Q Why did you move to Morris Street?

4 A Because my mom wanted to live with Shamia.

5 Q And who is Shamia?

6 A My aunt.

7 Q Do you know her last name?

8 A Baldwin, I think, yeah.

9 Q Do you know if your mom had another place to live at that

10 point?

11 A No, I don't know.

12 Q And had you been living with your mom before that?

13 A Yes.

14 Q Were you able to live with your mom at Morris Street?

15 A Yes.

16 Q Was your aunt, Shamia, also there?

17 A Yes.

18 Q So in terms of who lived there, it sounds like it was

19 you, your mom, and your Shamia?

20 A And my little sisters, Shalaya and S [REDACTED], and my

21 brother, Dimari.

22 Q At some point, did someone else come to live there?

23 A Yes.

24 Q Who was that?

25 A King.

1 Q And who was King or how did you know him?

2 A He was Shamia's boyfriend.

3 Q About how long after you got to Morris Street did King

4 move in?

5 A I think it was a couple of months.

6 Q And how long did you guys live in the same place? If you

7 know.

8 A Oh, I don't.

9 Q Do you think it was more than a year or less than a year?

10 A I think it was, I don't know, I think it was less than a

11 year.

12 Q Did you have a bedroom at that house?

13 A Yes.

14 Q Was that a room with a door that closed or a place where

15 you could sleep?

16 A A place to sleep.

17 Q What room of the house was that?

18 A That was -- well, at first, I was sharing a room with

19 Dimari and S [REDACTED] and Shalaya, but then I moved to like,

20 it was like a living room area, and it was me, S [REDACTED]

21 and Shalaya, and Dimari stayed in the front area.

22 Q So was Dimari in another room next to you?

23 A Yes.

24 Q When you slept in the living room, did you have a bed?

25 A Yes.

1 Q What did that bed look like?

2 A It was a bed that had like, I don't know, covers on it,  
3 I guess.

4 Q Was there furniture or was it a mattress?

5 A Oh, it was a mattress.

6 Q And who slept on that mattress?

7 A Me and S [REDACTED].

8 Q Would S [REDACTED] ever sleep anywhere else?

9 A Sometimes in my mom's room.

10 Q What about Shalaya?

11 A Shalaya has her own bed.

12 Q Was that in the same room as you?

13 A Yes.

14 Q Would she ever sleep somewhere other than the bed in the  
15 room with you?

16 A My mom's room.

17 Q What about your aunt, Shamia, did she have a room?

18 A Yes.

19 Q Who slept in that room?

20 A Her and King.

21 Q Did you have chores when you lived there or things that  
22 you had to do?

23 A Well, I mean, I just like, sometimes I cooked or  
24 sometimes I cleaned.

25 Q So you said this was a couple of years ago that you lived



1 at Morris Street? How old was Shalaya when you lived  
2 there?

3 A I think she was two.

4 Q I'm sorry?

5 A Two.

6 Q Did you help take care of her at all?

7 A Yes.

8 Q What kinds of stuff would you do?

9 A I'll babysit her, watch her, make sure she ate, make sure  
10 she's good.

11 Q And where would your mom be when you did that?

12 A Sometimes she doesn't be there, she doesn't be home.

13 Q What about your aunt?

14 A Not her, either.

15 Q What about King?

16 A Sometimes.

17 Q You said there were sometimes that your mom and your aunt  
18 weren't home?

19 A Yes.

20 Q Were there times where King was home when they weren't?

21 A Yes.

22 Q How about going to school? Where would your mom and your  
23 aunt be before you went to school?

24 A They'll be there.

25 Q What about after school?

1 A No.

2 Q No, they wouldn't be there?

3 A Sometimes they'll be, like, there, but they'll be like

4 sleeping.

5 Q What about King?

6 A He'll be there, too.

7 Q When they wouldn't be there, when they'd be gone from the

8 house, how long would they be gone for?

9 THE COURT: When you say they, I think you need

10 to give the names.

11 MS. SICONOLFI: Sure, thank you.

12 Q D■■■■■, when your mom or your aunt weren't home, how

13 long would they be gone for?

14 A Like a couple of hours.

15 Q Do you know where they went?

16 A No.

17 Q Do you know what they were doing?

18 A No.

19 Q So you said you knew King as your aunt's boyfriend?

20 A Yes.

21 Q What was he like when you first met him?

22 A He was, you know, it was cool. Like, he said hi all the

23 time, you know, he made sure we ate a lot and, you know,

24 like, he was nice.

25 Q And how would he make sure that you got to eat?

1 A He'll buy food.

2 Q Was there anything else you can think of that he did that  
3 was nice?

4 A No, not at the moment.

5 Q At some point, did that change, how he acted?

6 A Yes.

7 Q How did that change?

8 A Because he'll, like, start putting Shalaya on the wall  
9 because she did something bad or something. He, like,  
10 hit S [REDACTED] because she gave his dog a bone or something  
11 or let her eat it.

12 Q So it sounds like you described a time he put Shalaya on  
13 the wall?

14 A Yes.

15 Q And that's your two-year-old sister at that time?

16 A Yes.

17 Q Was that kind of like a timeout?

18 A Yes.

19 Q What about towards you, how did he act towards you?

20 A He wasn't like, I don't know, he wasn't as rude because  
21 like, like I would argue back.

22 Q At some point, did something happen with him that you  
23 didn't think was okay?

24 A Yes.

25 Q What happened?

1 A So one time I was in Shamia's room, and it was me,  
2 Shamia, and King, and she like left, she went to the  
3 store, and he put me with a chair and like, he was kind  
4 of touching me and stuff, and then like, he like, you  
5 know, stucked his thing in me.

6 Q When you say he stucked his thing in you, can you tell me  
7 what body part of his you mean?

8 A His stick, his penis.

9 Q You said that you were in Shamia's room?

10 A Yes.

11 Q What were you doing in Shamia's room?

12 A We was, me and Shamia was talking.

13 Q And was King there?

14 A Yes.

15 Q And you said at some point, Shamia went to the store?

16 A Yes.

17 Q What happened after Shamia went to the store?

18 A That's when he just started, like, laying down, and then,  
19 like he laid down next to me.

20 Q Where was that?

21 A On Shamia's bed.

22 Q And what happened when he laid down next to you on  
23 Shamia's bed?

24 A That's when he started, he pulled the covers off, and  
25 that's when he started rubbing my leg.

1 Q When he rubbed your leg, did he use his hand for that?

2 A Yes.

3 Q And what part of your leg did he rub?

4 A Like the middle of my leg.

5 Q Did his hand move or stay in place?

6 A It moved.

7 Q Where did it move to?

8 A Like it moved, it just like -- he was just rubbing it,  
9 like, he didn't like really move anywhere.

10 Q And what happened next?

11 A And then that's when he told me to go on the, I think it  
12 was a stool or a chair.

13 Q Did you do that?

14 A Yeah, and then he told me to, like, lay over it, and  
15 that's when he pulled his pants down and then mine, and  
16 that's when he stucked his penis in me.

17 Q Where did he put his penis?

18 A Well, I would say, like, front area. Front, yeah.

19 Q Now, when you say front area, what body part is that for  
20 you?

21 A My vagina.

22 Q Is that something that you felt?

23 A Yes.

24 Q Where did you feel that?

25 A Like, it was like, I felt it like there, it was like

1 going in.

2 Q Into your vagina?

3 A Yeah.

4 Q And you said that he had -- well, let me ask you, did you

5 bend over the stool or did he move you over the stool?

6 A He moved me over the stool.

7 Q And so where was his body when your body was over the

8 stool?

9 A Behind me.

10 Q Where did you first feel his part or his penis?

11 A Nowhere.

12 Q Did you feel it touch the back of your body in any way?

13 A No.

14 Q What did it feel like?

15 A I don't know, it felt weird.

16 Q And what part of -- well, other than his penis directly,

17 was some part of his body touching your body? Did you

18 feel his body anywhere in the area of your buttocks?

19 A Maybe.

20 Q What was his body doing?

21 A Like, he was just touching me.

22 Q How?

23 A Like, his hands were just steady, like just there.

24 Q Where were they?

25 A Like, it was like below -- like, it was like above my

1 butt, but they was like right there.

2 Q And you're making a motion, are you motioning to your  
3 hips?

4 A Yes.

5 Q What did it feel like when you felt his penis inside your  
6 vagina?

7 A Horrible, I guess, because it was like, I didn't --  
8 I wasn't like, you know, used to doing that. I wasn't  
9 like -- I didn't know about that, so it was like, you  
10 know.

11 Q Did you do anything?

12 A No.

13 Q Do you remember if he said anything to you when he did  
14 that?

15 A I don't remember.

16 Q Do you remember if you said anything to him?

17 A I told him to stop.

18 Q Did he stop?

19 A Yes -- no, no, no, he didn't, sorry.

20 Q What do you remember, did he stop?

21 A No.

22 Q What made him stop?

23 A Because I told him that I was going to tell Shamia and my  
24 mom.

25 Q And did he say anything to you about that?



1 A No.

2 Q Did he stop at that point?

3 A Yes.

4 Q What happened when he stopped?

5 A I was, um --

6 Q What did you do?

7 A I left the room.

8 Q What about your clothes?

9 A Oh, I pulled them up.

10 Q And what about him, did he do anything with his clothes?

11 A He put his clothes on.

12 Q Where did you go when you left the room?

13 A I went in my mom's room.

14 Q What did you do in there?

15 A Watched TV.

16 Q Do you remember if anybody else was home?

17 A No, I don't remember.

18 Q Do you remember if your mom or your aunt were home?

19 A No, they wasn't.

20 Q Did Shamia come back from the store at one point?

21 A Yes.

22 Q Was that after this happened?

23 A Yes.

24 Q When you say he put his penis into your vagina, did that

25 happen that one time or more than one time?

1 A That one time.

2 Q Did anything else happen in Shamia's room that you

3 remember?

4 A No, I don't remember, I don't think so.

5 Q What about another room in the house, did anything happen

6 in another room of the house with King?

7 A No.

8 Q What about on the mattress where you slept?

9 A Oh, yeah.

10 Q Can you tell me what you remember about that?

11 A Like, I would be sleeping, and he'll come in my room and

12 he'll, like, try to grab the covers off, but then he'll

13 see my brother, so he'll act like he's looking out the

14 window.

15 Q Would that happen at night?

16 A Yes.

17 Q Where would he come from when he came into the room?

18 A Shamia's room.

19 Q Would you say anything to him?

20 A No.

21 Q Would he say anything to you?

22 A (No verbal response.)

23 COURT REPORTER: Is that no?

24 THE WITNESS: Huh?

25 COURT REPORTER: Is that no?

1 THE WITNESS: Oh, no. Sorry.

2 Q Is there a time where he pulled at the covers and stayed?

3 A No.

4 Q You described a time that he got into the covers with you  
5 in Shamia's room?

6 A Yeah.

7 Q Did he ever get into the covers with you in the living  
8 room where you slept?

9 A No.

10 Q You said that he used his penis to touch your body?

11 A Yes.

12 Q Did he use his hands to touch your body?

13 A Yes.

14 Q How did he use his hands?

15 A Like, he'll like pull my shirt up and, like, touch my  
16 boob at some point.

17 Q What would his hand do when he touched your boob?

18 A He'll hold it.

19 Q Did he say anything to you?

20 A No.

21 Q Do you remember if that happened over or under your  
22 clothes?

23 A It was under.

24 Q Would he use his hands to touch any other part of your  
25 body?

1 THE COURT: Do you have any recollection of  
2 where that happened or when it happened?

3 THE WITNESS: It would happen in Shamia's room.

4 Q Did he use his hands to touch any other part of your  
5 body?

6 A Yes.

7 Q Can you tell me about that?

8 A One time, he touched my vagina and he, like, used his  
9 mouth.

10 Q Can you tell me what you mean by used his mouth?

11 A Like he was licking it.

12 Q Licking what?

13 A My vagina.

14 Q Do you remember the day he licked your vagina?

15 A No.

16 Q Or what you were doing right before that happened?

17 A I was in my room before it happened.

18 Q And where did it happen?

19 A In Shamia's room.

20 Q Do you remember anyone else being there?

21 A My little sister.

22 Q Which sister?

23 A Shalaya.

24 THE COURT: When you say there, in the room or  
25 in the house?

1 THE WITNESS: They were in a room. Well,  
2 they're not in the same room as me, but they're in the  
3 house.

4 Q What about your mom or your aunt?

5 A No, they're usually not there.

6 THE COURT: That was a very general question and  
7 I think the answer was a very general answer. I think  
8 the question was what about your -- it was a very general  
9 question and the witness gave a very general answer.

10 Q D [REDACTED], do you have a specific memory of your aunt or  
11 your mom being in the house when King licked your vagina?

12 A No.

13 Q No, you don't remember that?

14 A (No verbal response.)

15 THE COURT: You have to respond.

16 THE WITNESS: No.

17 Q Do you remember where they were?

18 A No.

19 Q What about the way you said he touched your vagina with  
20 his hands, can you tell me what he did?

21 A Like, he like, like opened it up and then, that's when  
22 he'll put his tongue there and start licking.

23 Q Did he have to move your clothes to do that?

24 A Yes.

25 Q What clothes did he move?

1 A My pants and my underwears.

2 Q Did you do anything when he moved your pants or your  
3 underwear?

4 A No.

5 Q Did you say anything to him?

6 A Oh, I said, what are you doing.

7 Q Did he say anything to you?

8 A No.

9 Q Did you tell him whether or not he could do it?

10 A I told him, I just said, what are you doing, and then  
11 yeah.

12 Q What made him stop licking your vagina?

13 A Because Shamia was coming.

14 Q How do you know that?

15 A Because we heard the door opening, the house door.

16 Q Did he ask you if he could lick your vagina?

17 A No.

18 Q Did he tell you he was going to?

19 A Yeah.

20 Q Do you remember what he said?

21 A No.

22 Q Did you tell him he could lick your vagina?

23 A No.

24 Q Did you tell him not to?

25 A Yes.

1 Q Do you remember what words you said?

2 A No.

3 Q Before he put his penis in your vagina, did he ask you if

4 he could?

5 A No.

6 Q Has he ever asked to have sex with you?

7 A No.

8 Q What would you do with your body or what did you do with

9 your body when he licked your vagina?

10 A I froze up.

11 Q What about your hands, did you do anything with your

12 hands?

13 A I moved, I was moving his head.

14 Q Where were you moving his head?

15 A Like on the top of his head, I was pushing him away.

16 Q Were you able to keep him away?

17 A No.

18 Q What about when he used his fingers to open your vagina,

19 did you do anything with your hands?

20 A No.

21 Q What did it feel like when he licked your vagina?

22 A I don't know.

23 Q What about when he used his fingers to touch your vagina?

24 A It felt weird.

25 Q Did you feel where they touched?



1 A No.

2 Q Do you recall whether you felt them inside of your body?

3 A No.

4 Q You said you sort of froze up when he was doing that?

5 A Yes.

6 Q How were you feeling?

7 A Scared.

8 Q What were you scared of?

9 A Just like, like why is this happening to me.

10 Q Did he use his mouth like that one time or more than one

11 time?

12 A One time.

13 Q And what about his fingers, did he use his fingers like

14 that one time or more than one time?

15 A Just one time.

16 Q You talked about him rubbing the middle of your leg?

17 A Yes.

18 Q How high up did his hand go?

19 A It didn't go like, it just went up, but not like to my

20 vagina part, it was just like, just rubbing it.

21 Q Was that on the skin of your body or on clothes that you

22 were wearing?

23 A On clothes.

24 Q Did his hand touch you under your clothes on your leg

25 like that?

1 A No.

2 Q And you said that his hands touched your hips when he  
3 stood behind you?

4 A Yes.

5 Q Did they touch the front part of your body when he stood  
6 behind you?

7 A No, it was on the side, like on the side.

8 Q Had he ever asked you to do something like that before?  
9 Something involving your body?

10 A I don't remember.

11 Q Had he ever talked to you about your body before?

12 A Yes.

13 Q How did he talk to you about your body?

14 A Like he'll say my boobs are big and he likes girls with  
15 big boobs.

16 Q Did he say what he wanted to do to them?

17 A No.

18 Q Was he saying things like that before or after he touched  
19 your body the way you told us?

20 A After.

21 Q Did he touch your boobs again?

22 A No.

23 Q You mentioned you lived with your sister, S [REDACTED]?

24 A Yes.

25 Q And she was about how old then?

1 A I believe she was like seven or eight.

2 Q Had you ever seen King do something to your sister,

3 S█████'s body?

4 A Yes.

5 Q Can you tell me about that?

6 A So he let, King let us, me and J████, use his phone, and

7 we seen a video of S████ having no pants and underwear

8 on and she was in a chair against a counter, and it was

9 King rubbing her butt, and like, he was going to pull his

10 pants down, but I guess in the video, somebody came, so

11 he didn't do it.

12 Q You mentioned something, you mentioned you used King's

13 phone sometimes; is that right?

14 A Yes.

15 Q And you named somebody else, J████?

16 A Yes.

17 Q Who's J████?

18 A She's my stepsister.

19 Q Did she live at that house?

20 A No, she just came to sleep over sometimes.

21 Q So when J████ would come and sleep over, sometimes you

22 guys would use King's phone?

23 A Yeah.

24 Q What would you do with King's phone when you used it?

25 A We didn't really do anything, like, usually just be on

1           YouTube or.

2       Q     And you said you saw something on his phone?

3       A     Yes.

4       Q     Where did you see this on his phone?

5       A     It was in his gallery.

6       Q     What did you see?

7       A     Like I seen just videos of, like, other stuff, you know,

8           other stuff that's there, and then I seen S[REDACTED].

9       Q     So what did you do when you saw S[REDACTED], did you watch

10           that video?

11      A     Yes.

12      Q     And you said this was S[REDACTED] on a chair?

13      A     Yes.

14      Q     Could you tell what room it was in?

15      A     It was in the kitchen.

16      Q     In the kitchen in the house you lived in then?

17      A     Yes.

18      Q     How was S[REDACTED] on the chair, where was her body?

19      A     Like her knees was like, like her stomach was facing,

20           like, the counter area, and the chair, like the neck of

21           the chair was like, you know, like an open chair, and her

22           butt was facing the opposite way.

23      Q     So what part of her body was facing the camera?

24      A     Her butt.

25      Q     And you said she didn't have any pants or underwear on?

1 A No.

2 Q How did you know it was S [REDACTED]?

3 A Because I seen her face in the video.

4 Q What did her face look like in the video?

5 A She looked scared, like she didn't know what to do.

6 Q So the video that you saw had S [REDACTED] with her butt facing  
7 the camera?

8 A Yes.

9 Q And you said you saw him rubbing her butt?

10 A Yes.

11 Q Who was rubbing her butt?

12 A King.

13 Q How do you know it was King?

14 A Because I heard his voice.

15 Q What did you hear his voice say, do you remember?

16 A No, but I just heard his voice.

17 Q Did you see any of his body parts?

18 A No.

19 Q Did you see his hand if he was rubbing her butt?

20 A Yes.

21 Q Where was he touching her butt?

22 A He was just rubbing it.

23 Q Did you see something else on the video?

24 A No.

25 Q I believe you said you heard something on the video.

1 A Yes.

2 Q What did you hear on the video?

3 A I heard him talking, like, to stay in one place.

4 Q Did you hear anything else?

5 A No.

6 Q How long was the video?

7 A I don't know, I think it was like 30 seconds, a minute.

8 Q Do you know what made the video stop?

9 A No -- oh, someone was like walking, went to like walk in  
10 the door, so everything stopped.

11 Q How did you know that someone was about to walk in the  
12 door, what made you think that?

13 A Because we heard the door opening.

14 Q Do you know what door ---

15 A The front door.

16 Q -- you heard opening?

17 A The front door.

18 Q Is that the front door of the apartment?

19 A Yes.

20 Q How did you feel when you saw that video?

21 A I was heartbroken and I cried.

22 Q Did you see S [REDACTED] in the apartment that day?

23 A Yes.

24 Q Did you speak with her about it?

25 A Yeah, I asked her --

1 Q Not what you talked about, but did you address it with  
2 her?  
3 A Yes.  
4 Q What was her demeanor, how did she seem when you talked  
5 to her about it?  
6 A She just cried.  
7 Q What did you do with the phone after you saw that video?  
8 A I showed my mom.  
9 Q Was your mom home when you saw the video?  
10 A No.  
11 Q And this was King's phone?  
12 A Yes.  
13 Q Was King home when you saw the video?  
14 A Yes.  
15 Q Where was he?  
16 A He was with Shamia in their room.  
17 Q Did he know you had his phone?  
18 A Yes.  
19 Q Did you talk with him about what you saw?  
20 A Yeah.  
21 Q What did you say to him?  
22 A I told him, like, what was this, like, why did you do  
23 that.  
24 Q And what did he say to you?  
25 A He said, why you going -- he asked me why was I going

1 through his phone.

2 Q Did he say anything else?

3 A No.

4 Q Did you keep his phone or did you give it back to him?

5 A I gave it back.

6 Q Is that something you gave back to him right away?

7 A Yeah.

8 Q How could you have shown your mom the video if you gave

9 King the phone back right away?

10 A Oh, no, I showed my mom when she walked in, and then

11 that's when I said something to King.

12 Q And where did King go when you gave the phone back?

13 A With Shamia in their room.

14 Q Did the police come that night?

15 A Yeah, I think, yeah.

16 Q How much time went by after you gave King his phone back

17 before the police came?

18 A I don't know, like a couple of hours.

19 Q Do you remember where King was when the police came?

20 A In Shamia's room.

21 Q And was his phone in there with him?

22 A Yeah.

23 Q Do you remember what kind of phone King had?

24 A No.

25 Q Do you remember what color it was?



1 A I think it was silver.

2 Q Was it a flip phone or something that looked like a smart  
3 phone?

4 A Yeah, something that looked like a smart phone.

5 Q Do you remember knowing the name of it at some point?

6 A Yeah.

7 Q Do you forget that today?

8 A Yes.

9 Q D [REDACTED], I'd like to show you a picture. Is that screen  
10 in front of you lit up? Right there, is that light in  
11 front of you?

12 A Yeah.

13 Q Okay. Do you see that picture?

14 A Yes.

15 Q Do you recognize what's in that picture?

16 A Yeah.

17 Q What do you recognize it as?

18 A A phone.

19 Q Sorry?

20 A A phone.

21 Q Is that any specific phone or just a telephone?

22 A His phone.

23 Q Is that the type of phone he had when you saw the video?

24 A Yes.

25 Q Did it look like that when you had the phone?

1 A No.

2 Q So something about the photo looks different?

3 A Yes.

4 Q But is it fair to say this looks like the phone that he  
5 had when you saw that video?

6 A Yes.

7 MS. SICONOLFI: Your Honor, at this time, I'd  
8 mark this --

9 THE COURT: I was going to suggest you mark it  
10 for identification purposes.

11 MS. SICONOLFI: For identification.

12 THE COURT: That's fine.

13 COURT REPORTER: That's E for identification.

14 (Exhibit E was marked for identification; Cell  
15 phone.)

16 THE COURT: We have a system, jurors, exhibits  
17 that are in evidence are given a number. If there's  
18 something that's shown to a witness that may become  
19 evidence at a later point, we keep track of it by giving  
20 it a letter.

21 Q D [REDACTED], do you see King in the courtroom today?

22 A Yes.

23 Q Can you identify him by something that he's wearing?

24 A A plaid -- well, a blue and -- I don't know what it's  
25 called, but --

1 THE COURT: I think you started to say it.

2 THE WITNESS: A plaid? I didn't know if it was  
3 a plaid shirt.

4 MS. SICONOLFI: Your Honor, may the record  
5 reflect the witness has identified the defendant?

6 THE COURT: The record will so reflect.

7 MS. SICONOLFI: Thank you.

8 Your Honor, if I may have a moment?

9 THE COURT: Of course.

10 (Pause.)

11 Q D [REDACTED], do you have any relationship with your aunt,  
12 Shamia, now?

13 A Not really.

14 Q And you said you talk to your mom only sometimes?

15 A Yes.

16 Q I'd like to show you another picture. You talked about  
17 living at 12 Morris Street. Do you recognize this  
18 picture?

19 A Yes.

20 Q What is shown in this picture?

21 A My old house.

22 Q Is that the house at Morris Street?

23 A Yes.

24 Q Do you recall what apartment you lived in in that  
25 building?

1 A Three.

2 MS. SICONOLFI: Your Honor, at this time, I'd  
3 offer this in as the next exhibit.

4 THE COURT: Any objection?

5 MR. TENNEN: No.

6 THE COURT: All right, the photo of 12 Morris  
7 Street is admitted as the next exhibit.

8 MS. SICONOLFI: And if I can publish it to the  
9 jury?

10 THE COURT: You may.

11 COURT REPORTER: That will be Exhibit 4.

12 (Exhibit Number 4 was marked into evidence;  
13 Photograph.)

14 MS. SICONOLFI: I have no more questions at this  
15 time.

16 THE COURT: Okay, thank you, Ms. Siconolfi.

17 Mr. Tennen, cross examination.

18 CROSS EXAMINATION

19 (BY MR. TENNEN)

20 Q Hi, D [REDACTED], my name is Eric Tennen, and I'm also an  
21 attorney. We've never met before, right?

22 A No.

23 Q I'm also going to ask you a lot of questions. If you  
24 don't understand anything I say, will you please tell me?  
25 Just tell me you don't understand and I'll ask it again,

1           okay?

2       A     Yes.

3       Q     And if you don't know something, just tell me you don't

4           know.

5       A     Okay.

6       Q     And if you don't remember something, you can also tell me

7           you don't remember, it's perfectly fine, okay?

8       A     Okay.

9       Q     I don't want you to guess about anything, okay?

10      A     Okay.

11      Q     I might, at some point, I might want to show you some

12           things. When I do that, is it okay if I come up there to

13           kind of show you what I'm looking at?

14      A     Okay.

15      Q     To ask you a question about something, maybe read

16           something; is that all right?

17      A     Yes.

18      Q     So you were just shown a picture of Morris Street,

19           12 Morris Street.

20      A     Yes.

21      Q     I want to ask you some questions about what that looked

22           like on the inside, okay?

23      A     Yeah.

24      Q     Now, you said that basically at some point, you lived

25           there, your mom, Shantia, lived there, right?

1 A Yes.

2 Q Your aunt, Shamia, lived there, right?

3 A Yes.

4 Q And then your little sister, Shalaya, and your brother,  
5 Dimari, right?

6 A Yes.

7 Q And then at some point, King lived there, also, right?

8 A Yes.

9 Q So that's six people living in that one apartment?

10 A Yes.

11 Q And then you also said that -- is J■■■■ your stepsister?

12 A Yes.

13 Q Same mom, different dads?

14 A No, me and J■■■■ have the same little sister. Like my mom  
15 and her dad made S■■■■.

16 Q I see, okay. And sometimes, J■■■■ would come over and  
17 sleep there, right?

18 A Yeah.

19 Q So sometimes, there would be seven people in that house,  
20 right?

21 A Yes.

22 Q Every room in that house, someone lived in a room, right?

23 A Yes.

24 Q No empty rooms, right?

25 A Yes.

1 Q So King and Shamia had a room, right?

2 A Yes.

3 Q Your mom, Shantia, had her own room?

4 A Yes.

5 Q Okay, and then you and your sisters shared a room, right?

6 A Yes.

7 Q And then Dimari had his own place to sleep, too, right?

8 A Yes.

9 Q One of you, or you can tell me, one of you actually slept  
10 like in the living room, right, you guys converted the  
11 living room into a room?

12 A Yes.

13 Q Who was it that slept there?

14 A Me, Shalaya, and S [REDACTED].

15 Q All right, so you and your sisters slept there.

16 A Yes.

17 Q All right, and then the bedrooms, that's where everybody  
18 else was, right?

19 A Yes.

20 Q Okay, and then sometimes, J [REDACTED] would come over. When she  
21 slept over, she would sleep with you and your sisters in  
22 that living room area, right?

23 A Yes.

24 Q How often would J [REDACTED] come over?

25 A She'll come over, like, sometimes on the weekends.

1 Q Sometimes on the weekends?

2 A Yes.

3 Q And spend Friday, Saturday, Sunday?

4 A Yeah.

5 Q Every weekend, almost every weekend?

6 A No, not almost every weekend.

7 Q Some weekends.

8 A Yes.

9 Q Was there ever anyone else that stayed in that house?

10 A Keyon was living there at some point.

11 Q And who's that?

12 A My cousin.

13 Q Younger cousin.

14 A No, he's older.

15 Q Sorry, but a kid.

16 A No, he's not a kid, but you know.

17 Q Do you mean Shamia's ex-husband?

18 A No.

19 Q Her son.

20 A No, his son.

21 Q His son, sorry, yes. How old was he when he stayed

22 there?

23 A I think he was like 18 maybe.

24 Q I see what you mean by older kid, okay. Older teenager.

25 A Yes.



1 Q And so sometimes he would stay there, too.

2 A Yes.

3 Q And where would he stay when he stayed over?

4 A With my brother.

5 Q With Dimari.

6 A Yes.

7 Q Do you call him James or Dimari?

8 A Well, I call him Dimari, but sometimes I call him James.

9 Q All right, so if I say Dimari, you know who I'm talking  
10 about, right?

11 A Yes.

12 Q Is that his middle name, is that why you guys call him  
13 that?

14 A Yes.

15 Q Now, after King moved in, would you agree that you would  
16 see him and sometimes your mom or him and sometimes  
17 Shamia fighting?

18 A Yes.

19 Q They would fight, like arguing verbally, right?

20 A Yes.

21 Q Was it ever physical?

22 A No.

23 Q But they would do this in front of you and maybe some of  
24 the other kids?

25 A Yes.

1 Q How often would they fight?

2 A Like once a week.

3 Q Once a week?

4 A Yeah.

5 Q I know I asked you about two people, that wasn't a good  
6 question. Let's start with your mom, how often would he  
7 fight with your mom?

8 A Not really, he didn't really argue with her.

9 Q Okay, what about with Shamia, that's once a week?

10 A Sometimes, yeah, once a week, yeah.

11 Q And I think you said when he first moved in, he was cool,  
12 everything was okay with you guys, right?

13 A Yes.

14 Q Would you agree that the longer he stayed there, the more  
15 you didn't like him?

16 A Yes.

17 Q Would he also fight with your brothers and sisters?

18 A Yes.

19 Q I think you mentioned that he used to put Shalaya on the  
20 wall, right?

21 A Yes.

22 Q Sort of like a timeout?

23 A Yes.

24 Q And Shalaya was what, maybe two or three years old?

25 A Yes.

1 Q And you didn't like that he would make her stand there  
2 for such a long time, right?

3 A Yes.

4 Q How long would he make her stand there?

5 A (No response.)

6 Q If you remember. This is one of those questions.

7 A No, I don't remember.

8 Q Okay, great, I don't want you guessing, so if you don't  
9 remember, we'll move on. Would he ever put anyone else  
10 on the wall?

11 A No.

12 Q How many times do you think he put Shalaya on the wall?

13 A Maybe like twice.

14 Q And when he did that, would you argue with him about  
15 that?

16 A Yes.

17 Q Because you didn't like that, right?

18 A No.

19 Q You would tell him you didn't like that, right?

20 A Yes.

21 Q And you would tell him he shouldn't be treating her that  
22 way, right?

23 A Yes.

24 Q Now, what about -- not what about. When King -- let me  
25 ask you this. With S [REDACTED], do you remember once that

1           there was a big fight with King and S [REDACTED] and Dimari  
2           about her giving his dog a bone?

3       A     Yes.

4       Q     And I think you already said a little bit about that,  
5           right?

6       A     Yes.

7       Q     That started when King was out of the house --

8       A     Yes.

9       Q     -- right, and then he came home and he saw that, like,  
10          his dog was eating a bone or something like that, right?

11      A     Yes.

12      Q     And that upset him.

13      A     Yes.

14      Q     And he thought S [REDACTED] was the one who gave him the bone,  
15          right?

16      A     Yes.

17      Q     He got mad at her, right?

18      A     Yes.

19      Q     Do you remember he kind of banged her head a little bit  
20          against the wall when that happened?

21      A     Yes.

22      Q     And you didn't like that and you talked to him about  
23          that, right?

24      A     Yeah.

25      Q     Right when it happened, you talked to him about not doing

1           that, right?

2       A     Yeah.

3       Q     And Dimari was there, also, right?

4       A     Yeah.

5       Q     And you remember Dimari getting into a fight with King

6           about that?

7       A     Yes.

8       Q     Because he also was upset about how he treated S [REDACTED],

9           right?

10      A     Yes.

11      Q     And so after that, Dimari and King started fighting,

12           right?

13      A     Yes.

14      Q     And when I say fighting, physical, right?

15      A     Yes.

16      Q     Dimari, he was older, right? He was maybe like 16, 17

17           around that time?

18      A     Yes.

19      Q     So bigger than you, right?

20      A     Yes.

21      Q     And so he started punching King or King started holding

22           him down, something like that?

23      A     Yes.

24      Q     Now, do you remember another time where King and Dimari

25           got into a fight about taking out the trash?

1 A Yes.

2 Q Okay, and so King was upset because he asked Dimari to  
3 take out the trash and Dimari wouldn't, right?

4 A Yes.

5 Q And so again, they got into a fight inside of the house,  
6 right?

7 A Yes.

8 Q And you remember seeing that?

9 A Yes.

10 Q And at some point, King even called the police, himself,  
11 about that, right?

12 A Yeah.

13 Q And they came out to the house?

14 A Yes.

15 Q You were there when all that happened, right?

16 A Yes.

17 Q And you were yelling at King when that was happening,  
18 also, right?

19 A Yeah.

20 Q You didn't like how he was treating Dimari, right?

21 A Yes.

22 Q Would he ever try and -- do you know what the word  
23 discipline means?

24 A No.

25 Q Okay, punish, do you know what the word punish means?

1 A Oh, yeah.

2 Q Okay, would he ever try and punish you when he thought  
3 you did something wrong?

4 A No.

5 Q No? Would he ever try and put you on the wall because,  
6 I don't know, you didn't clean your room or something  
7 like that?

8 A No.

9 Q So it was just with Dimari and S [REDACTED] and Shalaya that  
10 you saw that?

11 A Yes.

12 Q Now, when he first moved in, do you remember that you and  
13 Shamia spoke a little bit about him?

14 MS. SICONOLFI: Objection, Your Honor.

15 THE COURT: Overruled as to that question. Do  
16 you need the question repeated?

17 THE WITNESS: Oh, yes.

18 Q Do you remember you and Shamia talking about King or  
19 Shamia telling you something about King when he first  
20 moved in?

21 A No.

22 Q No? Let's see, do you ever remember talking to K [REDACTED]  
23 about King before he moved in?

24 A No.

25 Q Okay. Do you -- I'm going to ask you a lot of questions

1           about what you remember now, okay?

2       A     Okay.

3       Q     If it's confusing, you tell me.

4       A     Okay.

5       Q     Do you remember that during, that there's been times

6           where you've talked to people, like police officers or

7           people from the District Attorney's office?

8       A     Yes.

9       Q     Okay, and they've asked you a lot of the same questions

10          that we're asking you today.

11      A     Yes.

12      Q     And so you would tell them the things that you would

13          remember about what had happened, right?

14      A     Yes.

15      Q     You remember having those different interviews with

16          people?

17      A     Yes.

18      Q     I want to show you something you said and see if that

19          helps you remember. Does that make sense?

20      A     Yes.

21      Q     So I'm going to show you something, I'm going to come up

22          there, is that all right?

23      A     Yes.

24      Q     And I'm just going to have you read it, okay? And then

25          I'll ask you some more questions, okay? Just read to



yourself, don't read it out loud, okay? I don't want them to hear this. I just want you to read right there, okay?

A (Witness reading.)

Q Have you read that?

A Um-hemorrhage.

Q Do you remember now that you spoke to Shamia about King before you --

A Oh, yeah.

Q You do remember that. Do you remember that Shamia told you to be careful with him because he was sneaky?

A Yes.

Q Do you remember -- I should have shown you this when I was up there, I'm sorry, but do you remember now that you spoke to K [REDACTED] once about King before he moved in?

A No, I don't remember.

Q You don't remember that, okay. So same thing, I'm going to come show you, okay?

THE COURT: The question will be whether that helps you remember something. It's not are those words on the piece of paper, the question would be do you actually remember something now that he's showed you.

Q Does that make sense?

A Yeah.

Q So I'm going to show you again, just read it to yourself,

1 all right? I don't want them to hear this.

2 A Okay.

3 Q Over here.

4 A (Witness reading.)

5 Q Did you read that?

6 A Yeah.

7 Q Does that help you remember whether or not you spoke to

8 K[REDACTED] before King moved in with you?

9 A No, I don't remember.

10 Q You don't remember, okay. I'm going to show you

11 something else. I'm going to show you one other page,

12 okay?

13 A Yes.

14 Q I need you to read here and all the way down the page if

15 you can.

16 A Wait, where?

17 Q Start right there.

18 A (Witness reading.)

19 Q Did you read that?

20 A Yes.

21 Q Well, let me stop you right there. Does that help you

22 remember whether K[REDACTED], you talked to K[REDACTED] before King

23 moved in?

24 A No.

25 Q It doesn't.

1 A I still don't remember.

2 Q All right, but you do remember talking to your mom about

3 him.

4 A Yeah.

5 Q What about Shantia, do you ever remember talking to

6 Shantia about King before or around the time he moved in?

7 A Yeah.

8 Q You do?

9 A Yeah.

10 Q And she would say some of the same things Shamia said,

11 right?

12 A Yeah.

13 Q To be careful about him?

14 A Yes.

15 Q That he could be sneaky?

16 A Yes.

17 Q Do you remember why they said he could be sneaky?

18 A No.

19 Q And that was before any of these things happened, right?

20 A Yes.

21 Q I know you talked a little bit about seeing the video and

22 then the police coming. When that happened, you went to

23 the hospital. Do you remember that?

24 A Yes.

25 Q Your mom took you?

1 A Yes.

2 Q And when you were at the hospital, you talked to maybe a  
3 nurse or a doctor about what you had seen?

4 A Yes.

5 Q Do you remember that?

6 A Yes.

7 Q And when you talked to them, did you have any problems  
8 communicating? Do you know what that means? Is that a  
9 confusing question?

10 A No.

11 Q Any problems communicating?

12 A No.

13 Q And did you feel safe with them at the hospital?

14 A Yes.

15 Q And you told them what you had seen on the video, right?

16 A Yes.

17 Q And you also told them that King had tried to rub your  
18 legs, right?

19 A Yes.

20 Q But you didn't tell them anything else about anything  
21 else he had done, right?

22 A No.

23 Q When you were at the hospital, do you remember if the  
24 police also came to talk to you?

25 A No.

1 Q You don't remember?

2 A No.

3 Q Do you remember ever talking to any police officers about

4 this?

5 A I think so.

6 Q You think so, okay, you just don't remember where it was?

7 A No.

8 Q Okay. Do you remember that it was a couple of days, at

9 least, or soon after they had come that night?

10 A Yes.

11 Q Okay, so it was around the same time period, right?

12 A Yes.

13 Q And when you talked to the police, did you feel

14 comfortable talking to them?

15 A Yeah.

16 Q Any problems communicating with them?

17 A No.

18 Q Okay, and you felt safe when they were there?

19 A Yes.

20 Q And you told them, answered some of their questions about

21 what happened, right?

22 A Yes.

23 Q And then you remember having that bigger interview that

24 was in a room that was being taped with another woman,

25 right?

1 A Yes.

2 Q That was a much longer interview, right?

3 A Yes.

4 Q I don't know, maybe an hour, maybe more than an hour?

5 A Yes.

6 Q Again, around the same time period, right?

7 A Yes.

8 Q All right, and did you feel -- did you have any problems  
9 communicating with her?

10 A No.

11 Q Did you feel safe talking to her?

12 A Yes.

13 Q Were you comfortable in that room?

14 A Yes.

15 Q You were, okay. And she asked you a lot of questions,  
16 right?

17 A Yes.

18 Q More than probably the police or the nurse had asked,  
19 right?

20 A Yes.

21 Q Okay, and you gave her a lot of answers, right?

22 A Yes.

23 Q Okay. Do you -- and then I think you said that you also  
24 spoke to your -- maybe you didn't say this. You know  
25 what, let me start that question over. Did you speak to

1 your mom at some point about what had happened?

2 A Yes.

3 Q You did, okay. And was that before the police came to

4 your house?

5 A Yes.

6 Q And was that before you had seen the video with S [REDACTED]?

7 A No.

8 Q It was after you saw the video with S [REDACTED]?

9 A Yes.

10 Q That's when you were basically telling her what you saw

11 in the video with S [REDACTED], right?

12 A Yes.

13 Q When you were telling your mom about what you saw, did

14 you feel safe talking to her?

15 A Yes.

16 Q Any problems communicating with her?

17 A No.

18 Q Did you ever speak to, let's say, your brother, Dimari,

19 about anything that happened with King?

20 A No.

21 Q Did you speak to him about the video?

22 A Yes.

23 Q Was he one of the people that saw the video?

24 A Yes.

25 Q When you were looking at it, who was in the room with

1           you?

2       A     It was J[REDACTED].

3       Q     J[REDACTED].

4       A     And Dimari.

5       Q     And Dimari, okay. What about Ty, who's Ty?

6       A     That's a friend.

7       Q     Just a friend.

8       A     Yeah.

9       Q     Of yours?

10      A     Yes.

11      Q     About the same age as you?

12      A     Yes.

13      Q     Was he there when the video was playing?

14      A     Yes.

15      Q     Was he just over hanging out with you guys?

16      A     Yeah.

17      Q     Okay, so just kind of randomly there, I guess?

18      A     Yes.

19      Q     Was he in the room when you guys saw the video?

20      A     Yes.

21      Q     He was, okay, and then you showed your mom the video,

22           too.

23      A     Yes.

24      Q     Did anybody else see that video? If you can remember.

25      A     I think Shamia saw it.



1 Q What makes you say that?

2 MS. SICONOLFI: Objection, Your Honor.

3 THE COURT: Which?

4 MS. SICONOLFI: I think the answer is  
5 speculation.

6 THE COURT: Well, she gave a name. Were you  
7 guessing or do you have a recollection?

8 THE WITNESS: No, Shamia.

9 Q Okay, and where did she see that?

10 A She saw it when King had his phone in her room.

11 Q So that same day.

12 A Yes.

13 Q And then anyone else we're missing who was in the house  
14 that day?

15 A No.

16 Q Okay. So when you, when you talked to your mom, this is  
17 Shantia, right?

18 A Yes.

19 Q Am I saying that right, Shantia?

20 A Yeah.

21 Q You talked to her about what you saw in the video. Did  
22 you talk to her about anything that happened with you and  
23 King?

24 A No.

25 Q Did you guys talk to anyone else, do you remember calling

1 anyone about the video?

2 A No.

3 Q J■■■■'s dad, who is J■■■■'s dad?

4 A Lorenzo.

5 Q Lorenzo. Do you remember calling Lorenzo to talk about

6 the video?

7 A No.

8 Q No. Sorry -- you don't remember that, okay. This is one

9 of those questions I'm going to ask you to remember a

10 bunch of stuff again. Do you remember when you gave that

11 long interview, you told the woman who you gave the

12 interview with that you had told your mom a couple of

13 days before about King rubbing your legs. Do you

14 remember that?

15 A Yes.

16 Q You do? Okay. So you did tell her that, right?

17 A Yes.

18 Q So did you talk to your mom before you saw the video

19 about King or not?

20 A Yes.

21 Q You did, okay, and was it what I said, a couple of days

22 before you had told her that he was rubbing your legs?

23 A Yeah.

24 Q Same things you were describing to the jury, right, about

25 touching your legs?

1 A Yes.

2 Q When you told your mom that, did you feel comfortable

3 talking to her?

4 A Yes.

5 Q You felt safe talking to her?

6 A Yes.

7 Q King wasn't there, right?

8 A No.

9 Q Did you tell her -- you didn't tell her anything else,

10 right? You only told her about rubbing the legs, right?

11 A Yes.

12 Q I know you said a lot of things before when you were

13 asked questions, but you didn't tell your mom about any

14 of that stuff, right?

15 A No.

16 Q Okay. And when you told your mom, she didn't really do

17 anything, right?

18 A No.

19 Q I mean she listened to you, right?

20 A Yeah.

21 Q And got mad at King, right?

22 A Yes.

23 Q But that was about it.

24 A Yes.

25 Q No one else took any other --

1 A No.

2 Q Do you remember when you did that long interview, one of  
3 those questions again, all right, when you did that long  
4 interview, that you told the person that you had also  
5 spoken to Dimari about King rubbing your legs, do you  
6 remember that?

7 A Yes.

8 Q And that was before you saw the video, right?

9 A Yes.

10 Q Maybe around the same time you told your mom?

11 A Yes.

12 Q Make sense?

13 A Yes.

14 Q And remember that you told Dimari the same thing about  
15 not feeling comfortable about King rubbing your legs,  
16 right?

17 A Yes.

18 Q So you told them both about the same thing, right?

19 A Yes.

20 Q And that was a different conversation, right? You spoke  
21 to Dimari alone?

22 A Yeah.

23 Q And you spoke to your mom alone.

24 A Yes.

25 Q Did you feel comfortable talking to Dimari?

1 A Yes.

2 Q You feel safe around him?

3 A Yes.

4 Q King wasn't there, right?

5 A No.

6 Q And when you told him, he didn't really do anything,  
7 either, right?

8 A No.

9 Q He just kind of moved on, if you will, right?

10 A Yes.

11 Q So when you saw that, when you saw that video, at some  
12 point, and you tell me, at some point, you spoke to  
13 Shamia about it, right?

14 A Yes.

15 Q Do you remember if this was before the cops came, after  
16 the cops came?

17 A It was before.

18 Q Before, okay, and so you told what you saw in the video,  
19 right?

20 A Yes.

21 Q Did you tell Shamia anything about, anything else between  
22 you and King?

23 A No.

24 Q Do you remember writing stuff down about, about King?

25 A Yes.

1 Q And was it Shamia that asked you, or not asked you, maybe  
2 suggested you should do that?

3 A J[REDACTED].

4 Q Say that again?

5 A Her and J[REDACTED].

6 Q Her and J[REDACTED] suggested you should write it down.

7 A Yes.

8 Q And then you wrote some stuff down, right?

9 A Yes.

10 Q Did you write anything down for anyone else?

11 A I don't remember.

12 Q You don't remember. Did you write anything down for  
13 S[REDACTED] about what she saw or did or heard?

14 A I don't remember that.

15 Q You don't remember that.

16 A No.

17 Q I'm going to ask you one of these questions again. Do  
18 you remember when you spoke to that woman in the long  
19 interview that you told her that you had written stuff  
20 down for S[REDACTED]?

21 A Yeah.

22 Q You do remember saying that?

23 A Yes.

24 Q So did you write anything down for S[REDACTED]?

25 A I don't remember if I did.

1 Q I got it. You said you did, but you don't remember if  
2 you did.

3 A I don't remember if I did, yeah.

4 Q That makes perfect sense. What about J■■■■, do you  
5 remember writing anything down for J■■■■?

6 A Yeah, I did, yeah.

7 Q You do remember that.

8 A Yes.

9 Q Okay, and was it around the same time you wrote down your  
10 stuff?

11 A Yes.

12 Q And do you remember what you did with that, what you did  
13 with the things that you wrote down?

14 A I gave it to Shamia.

15 Q You gave it to Shamia, that's your memory?

16 A Yes.

17 Q Now, when you did this interview, back to these questions  
18 again, sorry I keep asking you, when you did this  
19 interview, this was maybe, I don't know, two years ago,  
20 three years ago? Long time ago, right?

21 A Yes.

22 Q 2016, does that sound about right?

23 THE COURT: Don't guess. Do you have any  
24 recollection of when you were interviewed, how long ago?

25 THE WITNESS: No.

1 Q Do you remember it was a little bit after the police  
2 came?

3 A Yes.

4 Q All right. And this all happened in 2016, right?

5 A Yes.

6 Q Okay. So when you did this long interview, you said some  
7 things that are a little different than the things you  
8 said today. Do you remember saying different things?

9 A Yeah.

10 Q You do, okay, so I'm just going to ask you about some of  
11 the things that are different, okay? Is that all right?

12 A Yes.

13 Q Okay, and if you don't remember, then we can read it  
14 together to see if that helps you remember, okay?

15 A Okay.

16 Q So once again, don't guess. If you don't know, you don't  
17 know. If you don't remember, you don't remember. Okay?

18 A Okay.

19 Q When you did this interview, you said that when King  
20 would try to do these things, that sometimes you would  
21 kick him or use your hands to move his hands away. Do  
22 you remember saying that?

23 A Yes.

24 Q Today, you didn't say that. Today, you said that you  
25 sort of froze or didn't use your hands or anything. So



1           what do you remember? Did you use your hands to try and  
2           move him away and kick him or not?

3       A     Yes.

4       Q     You did.

5       A     Yes.

6       Q     So what you said in this interview was a little closer to  
7           what happened.

8       A     Yes.

9       Q     When you did this interview, you said that one time, King  
10          actually got into the bed with you and J [REDACTED] when you were  
11          both sleeping there together.

12      A     Yes.

13      Q     Do you remember saying that?

14      A     Yes.

15      Q     You didn't mention that today, right? So which is it,  
16          did he do that once, did he get into the bed when both  
17          you and J [REDACTED] were there?

18      A     Yeah.

19      Q     You remember that.

20      A     Yes.

21      Q     And you said that when he did that, that's when he was  
22          trying to rub both your legs, right?

23      A     Yes.

24      Q     And that you and J [REDACTED] both kind of slapped his hand away,  
25          right?

1 A Yes.

2 Q And you would say things to him when he tried to do that,  
3 right?

4 A Yeah.

5 Q So you'd say things like, listen, do that again, we're  
6 going to have a problem. Something like that?

7 A Yeah.

8 Q Not an exact quote, but something like that, right?

9 A Yes.

10 Q You would tell him to stop, right?

11 A Yes.

12 Q When you did this interview and you were talking about  
13 what he did, you said that he would try and use his hand  
14 to touch your areas, but you wouldn't let him, right?

15 A No.

16 Q You didn't let him get that far, right?

17 A Yeah.

18 Q So that he never actually was able to touch either your  
19 vagina or anything like that, right?

20 A Yeah.

21 Q You said that during this interview, right?

22 A Yeah.

23 Q That's a little different than what you said today,  
24 right?

25 A Yeah.

1 Q So which is it, was he able to touch it or no?

2 A He was.

3 Q He was, okay. So what you said in this interview -- what

4 you said today is little closer to what happened.

5 A Yes.

6 Q All right. When you did this interview, you said that he

7 tried to touch your butt area, the area in your butt a

8 lot, right?

9 A Yes.

10 Q I know these are some really not great questions, but

11 I just need to ask so we can figure it out.

12 A Um-hemorrhage.

13 Q You were asked about whether he tried to touch inside

14 your butt or not, right?

15 A Yeah.

16 Q About, like, your crack or the hole or things like that,

17 right?

18 A Yes.

19 Q And you said he tried to, but he wasn't able to, right?

20 A Yeah.

21 Q But you didn't say anything about him trying to touch

22 your vagina, right?

23 A Yes.

24 Q Today, you didn't say anything about him trying to touch

25 your butt, right?

1 A Yeah.

2 Q Just your vagina, right?

3 A Um-hemorrhage.

4 Q I'm sorry, you have to --

5 A Yes.

6 Q So what you're saying today is he never tried to touch  
7 your butt, it was just your vagina, right?

8 A Yes.

9 Q But in this interview, you said it was just your butt and  
10 not your vagina, right?

11 A Yeah.

12 Q When, when you did this interview and you talked a little  
13 bit -- actually, no, I'm sorry, I'm going to start that  
14 question over, okay?

15 You spoke to some police officers and maybe  
16 Ms. Siconolfi a couple of times recently before the  
17 trial, right?

18 A Yes.

19 Q Same thing, they asked you questions about all of this,  
20 right?

21 A Yes.

22 Q One of the things they asked you about, they asked you  
23 more questions about what you saw on the phone, right?

24 A Yes.

25 Q With S [REDACTED]?

1 A Yes.

2 Q And when you talked to them recently, you said that one  
3 of the things you could see on the phone video was that  
4 you could see King's, you could see his penis was out and  
5 going near S [REDACTED], but it didn't touch her.

6 A Yes.

7 Q Do you remember telling them that?

8 A Yes.

9 Q Maybe a couple of weeks ago?

10 A Yeah.

11 Q But today, you said you couldn't see anything except his  
12 hands, right?

13 A Yeah.

14 Q So which is it, was it just his hands you could see or  
15 something else?

16 A Something else.

17 Q Something else, all right. Can you describe how you  
18 could see that in the video? Where was the camera  
19 facing?

20 A It was facing S [REDACTED]'s butt. He was holding it up like  
21 that.

22 Q So you're saying that you could see his penis.

23 A Yeah.

24 Q What about his face, I think you said you could see his  
25 face at some point.

1 A No.

2 Q You don't remember saying that you could see his face?

3 A No.

4 Q In this interview, you don't remember saying you could  
5 see his face?

6 A No.

7 Q So you're saying you could not see his face at all.

8 A No.

9 Q All right, so you didn't say that to anybody.

10 A No.

11 Q All right. Do you remember when you did this interview  
12 that you said that sometimes he would walk around the  
13 house and you could see him walking around the house  
14 holding his penis?

15 A Yeah.

16 Q You remember saying that in this interview?

17 A Yes.

18 Q You didn't say that today, so same question, which one is  
19 it, do you remember that?

20 A Yes.

21 MS. SICONOLFI: Objection, Your Honor. That  
22 wasn't a question posed to the witness today.

23 THE COURT: The specific question was not posed,  
24 that's correct.

25 MR. TENNEN: I can rephrase it.

1 THE COURT: I think she answered now to her  
2 recollection.

3 MR. TENNEN: I can rephrase.

4 THE COURT: I think it's fair that the question  
5 assumed something and it's not in evidence.

6 MR. TENNEN: Sure.

7 THE COURT: Jurors, strike the answer to the  
8 last question, and why don't you rephrase it.

9 MR. TENNEN: Sure.

10 Q Some of the questions you were asked today was, you know,  
11 did anything else happen with King, right?

12 A Yes.

13 Q And you didn't say anything about him walking around with  
14 his penis out, right?

15 A Yes.

16 Q When you did this interview, you said that he tried to  
17 touch you with his fingers and his tongue and his penis,  
18 right?

19 A Yes.

20 Q But, again, when you did this interview, you didn't say  
21 that he was ever able to actually do it, right? You were  
22 able to, like, slap his hand away or tell him to stop,  
23 right?

24 A Yes.

25 Q That's what you told them during this interview, right?

1 A Yes.

2 Q When you did this interview, you told them that sometimes  
3 he would offer you money to dance, like on a video. Do  
4 you remember that?

5 A Yes.

6 Q So that he would offer you, I think you said \$20?

7 A Yes.

8 Q Was this you or you and J [REDACTED]?

9 A No, me and S [REDACTED].

10 Q You and S [REDACTED], sorry, offer you guys to dance for him to  
11 record on the phone?

12 A Yes.

13 Q All right, and I think when you did this interview, you  
14 also said that he would offer you money and ask you to  
15 have sex with him, right?

16 A Yeah.

17 Q You remember that? Same thing, like \$20?

18 A Yes.

19 Q And he would say that to you.

20 A Yes.

21 Q Were other people around when he would say that?

22 A No.

23 Q And just to ask you about his phone a little bit because  
24 we didn't talk about this too much, do you remember that  
25 there was some app called Triller that you guys would



1 use?

2 A Yes.

3 Q Am I saying that right, Triller?

4 A Yes.

5 Q Right?

6 A Yes.

7 Q And that he would let you and maybe J [REDACTED] or just you and

8 S [REDACTED] or whoever it was use his phone to record dances

9 for this app, right?

10 A Yes.

11 Q So it's an app that essentially plays music and then you

12 can start it so it starts taking a video and can show you

13 guys dancing to the music, right?

14 A Yes.

15 Q Were there other things you could do on that app or was

16 that about it?

17 A Yeah, that's about it.

18 Q So you guys would ask him to use his phone, and he would

19 let you do it to record those videos, right?

20 A Yes.

21 Q The video with S [REDACTED], was there music playing when you

22 saw that video?

23 A No.

24 Q No.

25 MR. TENNEN: Your Honor, can we approach for a

1 second?

2 THE COURT: Sure.

3 SIDEBAR CONFERENCE:

4 MR. TENNEN: Now is the time when I would like  
5 to ask her about Maurice Berry, so I want to make an  
6 offer of proof about what it would be. I made a  
7 checklist of the things that she says Maurice Berry did  
8 and the things she said today.

9 THE COURT: All right, make your record.

10 MR. TENNEN: She said when she first met Maurice  
11 Berry, he wasn't that bad, but then her aunt, different  
12 aunt, told her to watch out for him because he's sneaky,  
13 same as I think she said about Mr. Jacques. She said  
14 that when she was sleeping with J [REDACTED] in bed, Maurice  
15 Berry came up, started rubbing both their legs, same  
16 thing she just said. She said to him, Maurice Berry, if  
17 you do that again, we're going to have a problem. Same  
18 thing she just said. She said that Maurice Berry would  
19 rub her boobs, too, same thing. Had his penis out while  
20 in the kitchen. She didn't say kitchen in this case, but  
21 walked around with his penis out. He would say if you  
22 have sex with him, that he would give her \$20 if she  
23 would have sex with him, meaning Berry, same thing with  
24 Mr. Jacques. Said that she was lying down in the living  
25 room one day and felt him pull her pants down.

1 THE CLERK: The witness needs to go to the  
2 bathroom. Take a break?  
3 END OF SIDEBAR CONFERENCE.

4 THE COURT: Jurors, we're going to take, I'm  
5 going to give you a 10 minute break.  
6 (Jurors excused.)

7 THE COURT: The witness can step down. I think  
8 the witness needs a bathroom break.

9 Since the jurors are not here, you can go back  
10 to the table and resume the offer of proof.

11 MR. TENNEN: Just so my client can hear what we  
12 started talking about, I was saying that this is what I'd  
13 like to ask the witness about, the Maurice Berry  
14 allegations, and I started going down the list of things  
15 that she said about Maurice Berry that were identical to  
16 the things she said about Mr. Jacques. Where I left off,  
17 she said one time about Berry, that she was just lying  
18 down in the living room, she felt him pull her pants  
19 down, rubbing all the way up her leg. He was just  
20 sitting there on the bed while everyone else was  
21 sleeping. When her aunt woke up, different aunt, he went  
22 away and got back in bed. She said about Maurice Berry  
23 rubbing, he would rub my butt with his hands. He would  
24 say about will you have sex with me and also said --  
25 well, she didn't say this about K██████, but I'll just

1 make a record, in her SAIN interview, she had said that  
2 K [REDACTED] had told her about King before he moved in.  
3 I will ask, you know, I can get that in through the  
4 police officer that she made that previous statement.  
5 About Maurice Berry, she said another cousin of hers,  
6 [REDACTED] told her that Maurice touched her, also.

7 So those are the things I want to ask about Maurice  
8 Berry that are identical to the things that she said  
9 about Mr. Jacques.

10 THE COURT: How would any of this testimony be  
11 relevant to the basis of impeachment? In other words,  
12 bias, motive, a failing of perception on the part of the  
13 witness or a prior inconsistent statement.

14 MR. TENNEN: It's about knowledge, the same  
15 exact reason the evidence of prior abuse comes in under  
16 Ruffen and those cases. The only difference is this  
17 witness is a little older in those cases, but the same  
18 reason applies.

19 THE COURT: It's a dispositive fundamental  
20 difference which is that there is no, you're not saying  
21 that the witness is conflating two different incidents.

22 The offer of proof you're making is that this  
23 information is enabling this witness to be a better  
24 fabricator because she is fabricating based on details  
25 that she is drawing from another incident of being

1 sexually assaulted.

2 MR. TENNEN: That is the basis of *Ruffen*, *Ruffen*  
3 is not just conflating, it's how would someone know these  
4 things, they know it because it happened before.

5 THE COURT: I have to correct myself because  
6 I meant, I was discussing the *Bohannon* case.

7 MR. TENNEN: Oh, sorry, okay.

8 THE COURT: Again, the *Ruffen* case is a  
9 different, that's a different issue, and again, *Ruffen*  
10 deals with a situation where a child witness is so young  
11 that the jury would conclude that she would only have  
12 knowledge of anatomical parts or sexual acts based on her  
13 experience with the defendant, but there's evidence of  
14 what you might call a third-party culprit, someone else  
15 from whom she could have gotten this knowledge.

16 MR. TENNEN: Right, right.

17 THE COURT: This 18-year-old witness clearly has  
18 other sources of information about sex and there's no --  
19 to me, *Ruffen* has little relevance to the case as  
20 *Bohannon* has.

21 MR. TENNEN: She's 18 now, she was 16 at the  
22 time it happened, 15 at the time it happened. There's  
23 nothing in the record that she had other sources of  
24 information about sexual matters. But more  
25 importantly --

1 THE COURT: I'm sorry, before you go on, let me  
2 just make sure, does the Commonwealth objected to this  
3 line of questioning?

4 MS. SICONOLFI: Yes, Your Honor.

5 THE COURT: Okay.

6 MR. TENNEN: I think that was implied.

7 THE COURT: I just wanted to make sure we were  
8 not wasting our time.

9 MR. TENNEN: Sure, fair enough. It's not just  
10 about knowing these things, although there's nothing in  
11 the record that shows she knows these things, but what  
12 I think is critical is the diversity of things she is  
13 alleging.

14 This is not making a single allegation about  
15 something sexual in nature. She is alleging very diverse  
16 things, that he got in bed with her and J■■■■, which said  
17 before, different than that; that he offered her money to  
18 have sex, which is a totally different kind of  
19 allegation; that he --

20 THE COURT: But you brought these things up on  
21 cross examination.

22 MR. TENNEN: To make the record, I have to make  
23 the record --

24 THE COURT: That's fine, but --

25 MR. TENNEN: For two reasons, one to show that

1 she had said this before and she's not saying it now, but  
2 also to show that is how she accused him, right? She  
3 accused him with that MOTION that is identical to the  
4 MOTION --

5 THE COURT: But don't you see the fundamental  
6 flaw of saying -- your whole theory is that this  
7 information turned her into a better liar on the stand,  
8 and the Commonwealth did not even elicit testimony of  
9 these actions.

10 I understand that you may feel the need to bring  
11 them up to create a record, but it completely undermines  
12 your theory of admissibility here because many of these  
13 details, the Commonwealth did not even elicit in its  
14 direct exam.

15 I understand you're making a record, you can  
16 probably tell where I'm going on this, but I'll certainly  
17 let you continue.

18 MR. TENNEN: One more point. It's not that it  
19 makes her a better fabricator now, it was at the time,  
20 and the fact that she's now saying something different,  
21 I think, makes it more relevant, meaning this is the  
22 MOTION she described at the time that was identical to  
23 the MOTION from Maurice Berry which are very diverse  
24 acts, and she's now not even being consistent with that,  
25 I think, shows that at the time -- at least let's me

1       argue or should let me argue that at the time, the way  
2       she was able to piece these allegations together is from  
3       a prior experience.

4               THE COURT: Okay, so just to paraphrase, what  
5       you're saying is after you have effectively and  
6       extensively cross-examined her on her prior inconsistent  
7       statements, I should allow the defendant to elicit the  
8       fact that one possible reason for the inconsistency is  
9       that she was sexually assaulted and propositioned by  
10      another man.

11             MR. TENNEN: It's a little unfair because I had  
12      to lay a foundation to show that --

13             THE COURT: I'm not criticizing the foundation,  
14      I'm asking you --

15             MR. TENNEN: Okay, well --

16             THE COURT: Please, please.

17             MR. TENNEN: Sorry.

18             THE COURT: We're both creating a record here.

19             MR. TENNEN: Yes, you're right, I'm sorry.

20             THE COURT: Am I correct that that's what you  
21      want me to do, I am paraphrasing what you want me to do.

22             MR. TENNEN: Yes, but I needed to, I didn't know  
23      how else to establish that foundation.

24             THE COURT: I'm not criticizing you one way or  
25      another --



1 MR. TENNEN: I know you're not.

2 THE COURT: -- for anything that you're doing.

3 MR. TENNEN: I'm just saying that's how I chose  
4 to do it. That's how I chose to do it, to lay the  
5 foundation, I save that for the end, even though I may  
6 have done it somewhere else, to make sure I got through  
7 it, you know, other than a couple of wrap-up questions,  
8 if you will, so that I could ask you at that point before  
9 I asked her any questions about it.

10 And I also knew that one of the things you had  
11 said was, you know, the acts -- at the very least, I  
12 needed to lay a foundation that they're similar, so  
13 that's another thing I was trying to do is lay that  
14 foundation.

15 THE COURT: That's fine, and obviously, you have  
16 made as thorough a record as one could make, so in the  
17 event of a conviction --

18 THE DEFENDANT: I want to know if --

19 THE COURT: Please, sit down, Mr. Jacques.

20 MR. TENNEN: My client is just asking to  
21 understand the reason you're inclined not to let this in  
22 is because it doesn't -- as I understand it, I guess, is  
23 because it doesn't fall under one of the traditional  
24 areas of impeachment.

25 THE COURT: I'm about to give my reasons.

1 MR. TENNEN: Thank you.

2 THE COURT: The reasons I'm not allowing this  
3 are multiple. First, to me, it does not follow under any  
4 of the -- certainly, at best, indirect, and I would say  
5 somewhat, it's trying to put a square peg in a round  
6 hole, and in my view, it does not fall into any of the  
7 key areas of bases of cross-examination, inconsistent  
8 statements, bias, motive, failing of perception.

9 It does not fall within *Bohannon* or *Ruffen* or  
10 the other limited exceptions to the rape shield statute.  
11 I looked at a bunch of cases, I have found no case which  
12 allows evidence under this particular theory.

13 I understand that, Mr. Tennen, you are arguing  
14 by analogy to other cases.

15 MR. TENNEN: Yes.

16 THE COURT: But I found no case that allows the  
17 evidence in under this particular theory. And under  
18 *Commonwealth v. Polk*, which is a 2012 SJC case, even if  
19 this was somehow admissible, I would have the discretion  
20 not to allow it if there was sufficient other  
21 impeachment.

22 And this witness has been extensively impeached  
23 -- and I will say that the notion that somehow this  
24 witness used details of other sexual assaults to somehow  
25 become a world-class fabricator, I think it's completely

1 undermined, and anyone who actually looks at the  
2 transcript of the direct and cross examination will see  
3 the extent of the cross examination here.

4 If there was ever a case where this is allowed,  
5 this is not the case, and to me, if I balance the policy  
6 of protecting women, and to me, even more so, protecting  
7 children under the rape shield statute, to me, it's not  
8 even a close call.

9 So you've made your offer of proof, but that  
10 line of cross-examination will not be allowed.

11 MR. TENNEN: If we can mark the transcript of --

12 THE COURT: I think we should. I think anything  
13 that -- I'm sure you understand, I'm not in any way  
14 trying to get in the way of your preserving this issue.

15 MR. TENNEN: I know you're not.

16 THE COURT: Anything you want to mark for  
17 identification, we'll mark for identification.

18 MR. TENNEN: So I guess what I would ask, the  
19 easiest thing is the transcript of her interview about  
20 Maurice Berry where I made my offer of proof.

21 THE COURT: Sure.

22 MR. TENNEN: I think that needs to be put under  
23 seal.

24 THE COURT: We'll mark that for identification  
25 purposes as the next letter exhibit and I will impound

1 it, finding, obviously consistent with the rape shield  
2 statute, that Ms. [REDACTED]'s privacy interest here  
3 greatly outweighs the public's need for the information,  
4 particularly where it's not even being admitted as  
5 evidence in the case, it's being marked for  
6 identification purposes.

7 So under the standards for impoundment, I make  
8 the finding that it should be impounded.

9 MR. TENNEN: I'll pass that up.

10 MS. SICONOLFI: And I haven't seen the  
11 transcript, so I don't know if it was independently  
12 prepared.

13 MR. TENNEN: It was. I have a copy for you.

14 MS. SICONOLFI: Okay.

15 COURT REPORTER: That will be F for  
16 identification.

17 **IMPOUNDED AND SEALED:** (Exhibit F was marked for  
18 Identification; Transcript of SAIN Interview of D [REDACTED]  
19 [REDACTED].)

20 THE COURT: Do counsel need a five minute break?

21 MR. TENNEN: My client needs a break, yes.

22 THE COURT: So we'll make this the morning  
23 break.

24 MS. SICONOLFI: I have to note for the record,  
25 Your Honor, this transcript actually reads as though I am

1 the person questioning.

2 MR. TENNEN: I know, they didn't have the names  
3 right.

4 THE COURT: It's not being admitted, it will be  
5 under seal.

6 MS. SICONOLFI: I just wonder if the actual  
7 recording of the interview is what should be in the  
8 record and impounded rather than an incorrect transcript.

9 THE COURT: All right, let me give these back to  
10 you, and if you find something that you think is better  
11 evidence, that's what we'll mark.

12 MS. SICONOLFI: Thank you, Your Honor.

13 THE COURT: We'll be in recess.

14 (Court in recess.)

15 (Jury entering.)

16 (Court in session.)

17 THE COURT: Ms. R [REDACTED], I'm just going to ask  
18 that you keep your voice up and try to keep pretty close  
19 to the microphone, okay.

20 THE WITNESS: Okay.

21 THE COURT: Mr. Tennen, you may resume.

22 D [REDACTED] [REDACTED] Resumed

23 CONTINUED CROSS EXAMINATION

24 (BY MR. TENNEN)

25 Q What do you prefer I call you, D [REDACTED], or Ms. [REDACTED]?

1 A It's either/or.

2 Q All right, D■■■■■, thank you for being patient. I only  
3 have a couple of more questions and then I'll sit down,  
4 okay?

5 A Okay.

6 Q So what I want to ask you about now, the last thing  
7 I want to ask you about is the thing that you wrote out  
8 when Shamia asked you to write it out. Remember we  
9 talked about that?

10 A Yes.

11 Q So around the time the police came, you spoke to Shamia,  
12 and she said you should write down what happened.

13 A Yes.

14 Q Okay, and then you did that in your own handwriting,  
15 right?

16 A Yes.

17 Q Sort of like a three-page letter, does that sound --

18 A Yes.

19 Q Not a letter, but three pages, right?

20 A Yes.

21 Q And you were basically trying to write down what you  
22 could remember about what happened, right?

23 A Yes.

24 Q And in that letter --

25 THE COURT: Shamia is your aunt?

1 THE WITNESS: Yes.

2 Q I'm sorry, I keep calling it a letter, I'm just going to  
3 call it in your statement, okay?

4 In that statement that you wrote, the only thing  
5 -- I shouldn't say the only thing. In that statement  
6 that you wrote, you said that when he put his penis in  
7 you, it was in your butt. Do you remember writing that?

8 A Yes.

9 Q And you didn't say anything about him putting his penis  
10 in your vagina in that thing that you wrote, right?

11 A Yes.

12 Q But your testimony today is he never did that, right, he  
13 never put his penis in your butt?

14 A Yes.

15 Q Yes, he did, or he didn't do that?

16 A He didn't.

17 Q Okay, that was a confusing question. What you're saying  
18 today is he put it in your vagina, right?

19 A Yes.

20 Q And that when you wrote this letter, you were confused or  
21 mistaken?

22 A Yeah, I was confused.

23 MR. TENNEN: Thank you. I have nothing further,  
24 Your Honor.

25 THE COURT: Okay, thank you, Mr. Tennen.

1 Ms. Siconolfi, any redirect?

2 MS. SICONOLFI: I do, but if we may approach,  
3 Your Honor?

4 THE COURT: Sure.

5 SIDEBAR CONFERENCE:

6 MS. SICONOLFI: Previously, Ms. R [REDACTED] has  
7 acknowledged having written the letter and she's been  
8 asked about its content, and I think that's sort of the  
9 best evidence.

10 The question is whether the letter, itself,  
11 should be before the jury because here, they're talking  
12 about a written statement, why don't they have it.

13 THE COURT: Well, let me ask, is there any  
14 objection to the letter, itself, coming in as evidence?

15 MR. TENNEN: Yes, I asked her for impeachment  
16 purposes, not as substantive evidence. If it comes in as  
17 evidence, it becomes substantive.

18 THE COURT: That's a fair objection. Are there  
19 statements -- obviously, the law is not just because  
20 someone uses a prior document for impeachment purposes,  
21 obviously, that does not make the document admissible,  
22 even though in some ways, you could say it is the best  
23 evidence of that, so I'm not going to allow it for that  
24 purpose.

25 It may, if you want to ask her about other



1 statements in that, that's fine.

2 MS. SICONOLFI: That was what I had anticipated.

3 THE COURT: That, I think, is fair.

4 MS. SICONOLFI: And then those questions and  
5 answers, I guess, will stand without the written document  
6 coming into evidence.

7 THE COURT: Yes, that's the way to do it.

8 MS. SICONOLFI: Thank you.

9 END OF SIDEBAR CONFERENCE.

10 REDIRECT EXAMINATION

11 (BY MS. SICONOLFI)

12 Q Ms. R [REDACTED], you were asked some questions about how  
13 your attitude changed towards King; is that right?

14 A Yes.

15 Q Some examples were about him putting your sister in  
16 timeout?

17 A Yes.

18 Q Or a fight that happened about whether or not someone  
19 gave his dog a bone to chew on?

20 A Yes.

21 Q And whether or not your brother took out the trash?

22 A Yes.

23 Q I think you described that King never really tried to  
24 punish you; is that right?

25 A Yeah.

1 Q When your attitude changed towards King, was he already  
2 touching you?

3 A No.

4 Q Was his touching you separate from the stuff about what  
5 he did with your siblings?

6 A Yes.

7 Q And how you felt about him touching you, was that  
8 separate than what was happening with your siblings?

9 A Yes.

10 Q When the police came to your house about the video,  
11 I believe you said you didn't tell them about everything  
12 that King did?

13 A Yeah.

14 Q Why not?

15 A I was too afraid tp.

16 Q What about when they came to your house for other  
17 reasons, why didn't you tell them then?

18 A I don't know.

19 Q Were you afraid then, too?

20 A Yes.

21 Q What about the doctors at the hospital, why didn't you  
22 tell them?

23 A I don't know.

24 Q Who was with you at the hospital, do you remember?

25 A My mom, S [REDACTED], and I think J [REDACTED] came.

1 Q And you said S [REDACTED] was upset, I believe?

2 A Yes.

3 Q And your mom was there?

4 A Yes.

5 Q And at that point, you had only told your mom that he had

6 rubbed your legs; is that right?

7 A Yes.

8 Q And she was there when you were able to talk to the

9 doctors at the hospital?

10 A Yes.

11 Q Why did you only tell your mom about him touching your

12 legs?

13 A I was afraid to because I knew that there was going to

14 be, like, a fight that would happen between my mom and

15 Shamia.

16 Q Was King still living there when you told your mom about

17 him rubbing your legs?

18 A I don't remember.

19 Q But the police came about the video after you told your

20 mom about him rubbing your legs, right?

21 A Yes.

22 Q And is that when King stopped living there?

23 A Yes.

24 Q You said you were afraid?

25 A Yes.

1 Q At that point, had you already seen King hurt your  
2 two-year-old sister?

3 A Yes.

4 Q Had you already seen him hurt S [REDACTED]?

5 A Yes.

6 Q Had you already seen him hurt your brother?

7 A Yes.

8 Q Had you already seen him hurt the dog?

9 A Yes.

10 Q What kind of things did he do with the dog?

11 A Like he used to beat the dog with the belt.

12 Q How did that make you feel?

13 A Like, I felt bad.

14 Q Bad for the dog?

15 A Yeah.

16 Q You were asked some questions about what Shamia had said  
17 to you about King when he first started coming around?

18 A Yes.

19 Q And I believe you said that she told you to be careful  
20 because he was sneaky?

21 A Yes.

22 Q What did that mean to you?

23 A I don't know.

24 Q Did that mean anything to you?

25 A No.

1 Q Did you know what to watch out for?

2 A No.

3 Q You talked about writing some things down about what King

4 did to you.

5 A Yes.

6 Q Why did you have to write them down?

7 A I was too, like, afraid to tell them, like, in person, so

8 I just wrote them down.

9 Q Is it easier for you to write it than to say it?

10 A Yes.

11 Q Do you have a hard time talking about what King did to

12 you?

13 A Yes.

14 Q Has that gotten easier over time?

15 A Yeah.

16 Q Why do you have a hard time talking about it?

17 A I just don't like the memories.

18 Q Is it something you think about a lot?

19 A Yes.

20 Q Is it something you try not to think about?

21 A Yes.

22 Q And you said what you wrote down, you gave to Shamia,

23 right?

24 A Yes.

25 Q You were asked a lot of questions before about things

1           that you said before.

2       A     Yes.

3       Q     And whether or not you remember saying them?

4       A     Yes.

5       Q     Some of those things were about how you said before that

6           there were things King tried to do; is that right?

7       A     Yes.

8       Q     Why do you think you said that he was trying to do things

9           instead of that he actually did them?

10      A     I don't know.

11      Q     Did you try to stop him when he did these things?

12      A     Yes.

13      Q     When you talk about or when you're asked questions about

14           things you said about him touching your butt in some way

15           --

16      A     Yes.

17      Q     -- is that embarrassing for you to talk about?

18      A     Yes.

19      Q     Why?

20      A     I just don't want to remember the moment, like, it was

21           happening.

22      Q     And you were asked just now about writing down that King

23           put something in your butt and whether or not you

24           remembered writing that. Do you remember writing that?

25      A     Yeah.

1 Q And I believe you said that when you wrote that, you were  
2 confused.

3 A Yes.

4 Q What were you confused about?

5 A Like which part, like, actually touching.

6 Q Which part his penis was touching?

7 A Yes.

8 Q Which part of your body?

9 A Yes.

10 Q You were confused about which part of your body his penis  
11 was touching?

12 A Yes.

13 Q Was that from when he was standing behind you?

14 A Yes.

15 Q Do you recall saying previously that you felt his penis  
16 on your back?

17 A No.

18 Q Or that it was in the crack of your butt?

19 A No.

20 Q No, you don't remember saying that?

21 A No.

22 MS. SICONOLFI: Your Honor, may I approach?

23 THE COURT: You may.

24 Could I see counsel at sidebar.

25 SIDEBAR CONFERENCE:

1 THE COURT: Are you impeaching her or trying to  
2 refresh her recollection?

3 MS. SICONOLFI: Trying to refresh her memory.

4 THE COURT: Okay. All right, at this stage, in  
5 light of her testimony, I'm going to be sensitive to  
6 overly leading questions. I feel you've been appropriate  
7 so far.

8 MS. SICONOLFI: We'll see I guess what --

9 THE COURT: You'll see what happens, okay.

10 MS. SICONOLFI: Thank you.

11 END OF SIDEBAR CONFERENCE.

12 Q I'm going to show you a page and I'm asking you to read  
13 part of it, okay? If you can start reading here and stop  
14 when you get here, and look up at me when you're done,  
15 okay? Take your time.

16 A (Witness reading document.)

17 Q Looking at that, does that help you remember if you said  
18 that his penis touched your back?

19 A Yeah.

20 Q Did you say that?

21 A Yes.

22 Q Do you recall that?

23 A Yes.

24 Q Happening?

25 THE COURT: Your question, do you recall that,



1           what are you --

2                   MS. SICONOLFI: Do you recall that happening.

3                   THE COURT: Are you asking do you recall her  
4           saying that or do you now recall that happening? Those  
5           are two very different things.

6       Q     Do you recall saying that earlier?

7       A     Yes.

8                   THE COURT: You can ask.

9       Q     Do you recall whether that happened?

10      A     Yes.

11      Q     Whether he did touch your back with his penis?

12      A     Yes.

13      Q     Reading this, does that refresh your memory about whether  
14           you said his penis was in the crack of your butt?

15      A     Yeah.

16      Q     Is that something you remember saying?

17      A     Yes.

18      Q     And is that something you remember happening?

19      A     Yes.

20      Q     D [REDACTED], you were asked questions also about the video  
21           that you saw?

22      A     Yes.

23      Q     With your sister, S [REDACTED]?

24      A     Yes.

25      Q     You said you didn't remember seeing his face on the

1 video?

2 A Yes.

3 Q What about something like his glasses, do you remember

4 seeing something like his glasses?

5 A Yes.

6 Q And I believe you said you saw his hands?

7 A Yes.

8 Q And heard his voice?

9 A Yes.

10 Q And you talked about using his phone and the app,

11 Triller?

12 A Yes.

13 Q To make, like, dance or music videos with your sisters?

14 A Yes.

15 Q And you said that he'd offer you money to dance?

16 A Yes.

17 Q Would he record you when you did that?

18 A Yes.

19 Q Would he tell you what to do with your clothes when he

20 did?

21 A Yes.

22 Q What did he tell you to do with your clothes?

23 A Like he told me, like, to put it a certain way.

24 Q Can you tell me what piece of clothing you're talking

25 about?

1 A Well, I had a dress on.

2 Q And what did he tell you to do with it?

3 A Pull it up.

4 THE COURT: Could I see counsel at sidebar.

5 SIDEBAR CONFERENCE:

6 THE COURT: I missed the last couple of  
7 questions. Were you asking her about an incident --  
8 I thought you had started asking about an incident in  
9 which he offered her money to do something.

10 MS. SICONOLFI: To dance.

11 THE COURT: To dance.

12 MS. SICONOLFI: And he recorded it with Triller.

13 THE COURT: Well, obviously, that will open the  
14 door to the testimony that I excluded if there was  
15 someone else -- why are you now opening the door to  
16 testimony that is the basis of my ruling that I did not  
17 allow -- one of the many reasons why I was not going to  
18 allow the defense to question about a different person  
19 offering her money to do sexual activity was that the  
20 Commonwealth didn't bring this up. I'm just stunned that  
21 the Commonwealth would now, after a ruling that protected  
22 this victim under the rape shield statute, that you now  
23 are asking, you're opening up the door to that subject.

24 MR. TENNEN: To be fair, I did ask her and I got  
25 her to say that. That was part of me laying the

1 foundation that what she says --

2 THE COURT: I understand that, but there's a  
3 difference. You did that to lay a foundation.

4 MR. TENNEN: That's correct.

5 THE COURT: The Commonwealth now is asking this  
6 as substantive evidence. I'm just, I feel like -- I'm  
7 totally stunned that you, that the Commonwealth would be  
8 opening the door or doing something that could  
9 conceivably open the door under the rape shield statute  
10 to questions about sexual assault by another person.

11 MS. SICONOLFI: These are distinct events and  
12 distinct accusations. There's no suggestion that Maurice  
13 Berry ever offered her money to dance for him or anything  
14 like that.

15 THE COURT: But there's an offer of proof that  
16 he offered her money to have sex with him. I'm just  
17 telling you, I mean, I am totally stunned, this is  
18 redirect, this is rehabilitating. Why is the  
19 Commonwealth eliciting evidence of new conduct that again  
20 was -- the fact that the Commonwealth didn't elicit that  
21 was part of the reason why I ruled the way I did under  
22 the rape shield statute.

23 MS. SICONOLFI: Well, first of all --

24 THE COURT: Look, I think you've been trying a  
25 good case, I think you're a good attorney, I think you're

1 ethical. I think what you're doing now makes no sense  
2 to me, and I think it's irresponsible because you're  
3 opening -- to me, now I'm going to have to revisit my  
4 ruling that protected this witness under the rape shield  
5 statute. I just don't get it.

6 MS. SICONOLFI: In no uncertain terms was  
7 I attempting to take advantage of any form of Your  
8 Honor's earlier ruling and slip something in.  
9 I absolutely see these as distinct events. I will  
10 absolutely leave the line of questioning.

11 I mean, it was in the vein of her being asked  
12 about all these things she accused him of before that she  
13 didn't testify to. Just as Your Honor suggested, it was  
14 an attempt at rehabilitation.

15 If Your Honor wishes to strike commentary about  
16 the use of the phone in that manner, you know, that's --

17 THE COURT: Well, no. What I'm going to do is  
18 I'm going to ask the jury to disregard the last several  
19 questions about this defendant offering her money.

20 As I said, I was focusing on the fact that she  
21 has completely changed her testimony with regard to  
22 whether it was a vaginal rape or an anal rape, so I did,  
23 I missed a couple of your questions.

24 But I thought you were asking -- what I heard  
25 was that you were asking about an incident in which this

1 defendant offered her money. Isn't that what you were  
2 eliciting?

3 MS. SICONOLFI: I think what I see --

4 THE COURT: That's a yes or no question.

5 MS. SICONOLFI: Well, no. But the words that  
6 I mentioned, the use of money, yes, because I was picking  
7 up on the question that counsel asked, and I was trying  
8 to tie it to cross rather than suggest I'm opening a  
9 whole new line of inquiry.

10 That was the only purpose of even speaking about  
11 that. So I'll leave the line of questioning.

12 THE COURT: Yes, I would leave it. She hasn't  
13 contradicted herself on those details, so I don't see a  
14 need to rehabilitate her on those details. That's my  
15 ruling.

16 MS. SICONOLFI: Okay.

17 END OF SIDEBAR CONFERENCE.

18 THE COURT: I'm going to ask the jury to  
19 disregard, I forget whether it was two questions, there  
20 were a few questions on the topic of Ms. R [REDACTED] being  
21 offered money to do certain activities, and I instruct  
22 the jury to disregard those questions and answers. We'll  
23 move on to the next topic.

24 Q Ms. R [REDACTED], I just want to clarify something that we  
25 talked about a few moments ago. You testified that you

1 now have, that your memory is refreshed and you recall  
2 King's penis being in the crack of your butt?

3 A Yes.

4 Q To be clear, did his penis go inside of your butt?

5 A No.

6 Q Where did his penis go?

7 A In my vagina.

8 Q At any point, did you think it was going into your butt?

9 A Yes.

10 Q What did you do?

11 A I moved.

12 Q And where did his penis go?

13 A In my vagina.

14 MS. SICONOLFI: Thank you. Nothing further,  
15 Your Honor.

16 THE COURT: Thank you, Ms. Siconolfi.

17 Any recross?

18 MR. TENNEN: One second.

19 THE COURT: Yes, of course, take a moment.

20 MR. TENNEN: I have nothing further, Your Honor.

21 THE COURT: Ms. R [REDACTED], your testimony has  
22 concluded, you may step down. You're free to go.

23 The Commonwealth may call its next witness.

24 MS. SICONOLFI: Commonwealth calls James  
25 Morrissey.

C E R T I F I C A T E

I, Nancy McCann, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript, prepared to the best of my ability, from the audio recording produced by Court Personnel of the Superior Court Department court proceedings in the above entitled matter.

I, Nancy McCann, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Nancy McCann, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

*(The proper name spellings herein, unless otherwise indicated, are phonetically spelled.)*

nancy mccann

Nancy McCann

Approved Court Transcriber

(781) 264-4764

nancy.mccann35@gmail.com

3-1-20

Date

PLEASE NOTE: THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT  
DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS  
UNLESS UNDER THE DIRECT CONTROL AND\OR DIRECTION OF THE  
CERTIFYING TRANSCRIBER.



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT

```
*****
COMMONWEALTH OF MASSACHUSETTS
V.
EDEN JACQUES
*****
```

DOCKET NO.  
1684CR00862

INTERVIEW OF D [REDACTED] [REDACTED]  
WEDNESDAY, OCTOBER 4, 2017

SUSAN M. LOBIE, CET  
OFFICE SOLUTIONS PLUS  
15 Marion Road, Salem, MA 01970  
(617) 471-3510  
[SueLobie@osptranscriptionservices.com](mailto:SueLobie@osptranscriptionservices.com)

1                    INTERVIEW OF D [REDACTED] [REDACTED]

2                    WEDNESDAY, OCTOBER 4, 2017

3  
4                    MS. SICONOLFI: I don't know if you remember  
5 -- I'm going to put this a little closer to us,  
6 all right D [REDACTED].

7                    Actually, it was funny, I was reviewing the  
8 last time we talked. I was looking at it a little  
9 bit, and you actually wrote down -- I think you  
10 wrote down your last name for me because I didn't  
11 know if it had two S's or two T's or one of each.

12                   MS. [REDACTED] Two of both.

13                   MS. SICONOLFI: It does.

14                   MS. [REDACTED] Mm-hmm.

15                   MS. SICONOLFI: So, I -- okay, and that's  
16 why I don't guess because for a second I was  
17 thinking you just had one S.

18                   And it's D [REDACTED], [REDACTED]

19                   MS. [REDACTED] Mm-hmm. [REDACTED].

20                   MS. SICONOLFI: [REDACTED]

21                   MS. [REDACTED] [REDACTED]

22                   MS. SICONOLFI: Got it. And then two S's,

23 [REDACTED] Like that?

24                   MS. [REDACTED] Yeah.

25                   MS. SICONOLFI: Perfect.

1 Q And I know that you probably told me this  
2 before, but can you tell me your date of birth?  
3 A 01/21/09.  
4 Q So, how old are you going to be this coming  
5 January?  
6 A Seventeen.  
7 Q Boy. So, you're sixteen right now?  
8 A Mm-hmm.  
9 Q Okay. All right. I also told you that I  
10 just went to your school.  
11 A Yeah.  
12 Q Yeah. And you said it's a small school.  
13 A Mm-hmm.  
14 Q There was a lot of noise.  
15 A Yeah, because there is a lot of kids there.  
16 Q Yeah.  
17 A There's a lot of kids.  
18 Q And --  
19 A There's like 280 kids in that small school.  
20 Q Yeah, that is small.  
21 A Yeah.  
22 Q What grades are there?  
23 A Ninth, tenth, and eleventh.  
24 Q Nine, ten, eleven. What grade are you?  
25 A I'm both well I'm kind of in the eleventh

1 grade because -- but I did take like some tenth  
2 grade classes because --

3 Q Okay.

4 A Like one at least because I failed that  
5 class.

6 Q Mm-hmm.

7 A So, I just take credit recovery for that.

8 Q So, you're in eleventh, but you take some  
9 tenth?

10 A But I'm taking tenth, too, yeah.

11 Q Okay.

12 A Because it's like credit recovery.

13 Q Mm-hmm. And did you go to that school last  
14 year, too?

15 A Yeah.

16 Q In ninth grade?

17 A Mm-hmm.

18 Q Oh, so you've been there.

19 A Mm-hmm.

20 Q Okay. What would you say the best thing  
21 about it is? Like --

22 A The best thing?

23 Q Because I'm going to ask you best and worst.

24 A I mean there is really nothing good about  
25 the school.

1 Q Really?

2 A No.

3 Q How come? What's the deal.

4 A No, it's -- I mean, the school -- I mean,  
5 I think the school is good overall, it's just that  
6 the kids there --

7 Q Yeah?

8 A -- it just makes it bad, like they'll just  
9 start a argument.

10 Q Mm-hmm.

11 It's just worse for the new kids, too.  
12 Like the new ninth graders, they just -- they're  
13 too much already.

14 Q Yeah, because school just started like not  
15 that long ago?

16 A Yeah, the ninth grader already go there.

17 Q Yeah. So, I guess I would say what's your  
18 least favorite thing about it?

19 Is it the kids or --

20 A Yeah.

21 Q Yeah. Okay.

22 A It's the kids, but I have friends in there,  
23 some friends in there.

24 Q Good.

25 A But you know --

1 Q D [REDACTED], can you tell me what your day is  
2 like there, like what time does school start?

3 A Are we talking about my school? 8:00.

4 Q And what do you do when you first get there?

5 A I get there, I go like to the cafeteria  
6 because that's where we have to go before like  
7 school starts.

8 A Mm-hmm.

9 q And when they shake your hand and then we  
10 go to class after.

11 Q Mmm. So, they actually shake your hand in  
12 the morning?

13 A Yeah. Mm-hmm.

14 Q Okay. And then what's your first class of  
15 the day?

16 A I have different classes every day so --

17 Q Okay.

18 A So, it starts at different times -- I mean  
19 different classes I have, but it starts at a same  
20 time, it's just different classes I have daily.  
21 Sometimes I have math, sometimes I have science.

22 Q Mm-hmm.

23 A It's just like that, so.

24 Q It depends on the day? Let's say it was  
25 yesterday, Tuesday. What would you have first?

1 A What class did I have first? I had math.

2 Q Math. Okay. And then what?

3 Tell me like your schedule throughout the  
4 day, for yesterday?

5 A I had math first, and then I had L support  
6 and then I had -- what else did I have in class?  
7 Oh, I had English.

8 Q Mm-hmm.

9 A I have English for an hour, though.

10 Q Mm-hmm.

11 A Because then I have lunch afer English.

12 Q Okay.

13 A And then I have -- what did I -- oh, I had  
14 science, and then I had my -- no, actually I had  
15 history and then I had ninth grade seminar.

16 So, I had science actually before I had  
17 English. So, it was Math, Science, L support,  
18 then English --

19 Q Yeah.

20 A And then I had lunch.

21 Q Okay.

22 A And then I had history, and then ninth grade  
23 seminar.

24 Q What's ninth grade seminar?

25 A It's like a class where some kids get

1 together and they go in that one particular class.  
2 So, just like -- it's smaller.

3 Q Does someone like speak about something in  
4 that class.

5 A Yeah. Like we do about like-- he wants us  
6 to learn tell us about perseverance and --

7 Q Oh.

8 A -- and stuff like that, yeah.

9 Yeah. He's a good teacher. He wants us to  
10 learn about perseverance and like how we're going  
11 to demonstrate it in school and stuff like that.

12 Q Yeah. That sounds like a good topic.

13 A Yeah.

14 Q I like that.

15 A We watch movies. Like we watched this one  
16 movie when it's like the Ron Clark Story.

17 Q Oh, I've never seen that movie.

18 A So, it's about kids who like didn't have a  
19 teacher at first and they would just be bad and --

20 Q Yeah.

21 A -- and they won't listen to the principal  
22 or nothing. So, there was this one guy who wants  
23 to be a teacher --

24 Q Yeah.

25 A So, he moved to New York.



1 Q Okay.

2 A He wanted to be a teacher so, the guy said  
3 he can get hired.

4 Q Mm-hmm.

5 A And then he tried to like, you know, settle  
6 the kids down but like it didn't really work.

7 It didn't really work out, and then there  
8 was this one girl who was like, she was like a  
9 role model.

10 Like she wasn't even a role model, she was  
11 like the girl starts stuff with teachers and stuff  
12 like that.

13 Q Mm-hmm.

14 A Kind of like Shamica, she'll make up stuff  
15 for everything with the teacher.

16 There would be fights in that class, and  
17 like basically the teacher -- the principal wanted  
18 him to help the students because they had like the  
19 lowest test scores in the school.

20 Q Yeah.

21 A So, he had to help them, and he helped them  
22 and they got good grades.

23 Q Wow.

24 A He never quit. He was going to quit, but  
25 he never did.

1 Q Yeah. He stuck with it. So, that's  
2 perseverance.

3 A Yeah.

4 Q Was that a true story, or could you tell  
5 if it was true?

6 A I don't know. The teacher didn't tell us,  
7 but he just said listen to this.

8 Q Yeah.

9 A I mean, he just kept telling me to listen  
10 to it.

11 And then we watched another video yesterday  
12 about -- there was this guy who was like drowning  
13 in the water and there were these guys that was  
14 recording him.

15 Q Mm-hmm.

16 A And smoking at the same time and everything.

17 Q Yeah.

18 A And then I said that if they had enough time  
19 to record this whole thing, they had time to save  
20 him.

21 Q Right.

22 A And they didn't even call 911, they just  
23 laughed at him and called him names and everything.

24 Q Oh, no.

25 A And then they didn't go to jail, but they

1 got charges against them.

2 Q Okay.

3 A And then, they don't know if they're going  
4 to go to jail or not.

5 Q Mm-hmm.

6 A I know they got charges against them, though.

7 Q Wow. So, it sounds like you watch these  
8 things that are kind of serious topics --

9 A Yeah.

10 Q -- but kind of make you think about things?

11 A He wants us to be better because --

12 Q Yeah.

13 A -- he's like -- he's not trying to have us  
14 do like a bad job in the streets and be out like --

15 Q Yeah.

16 A -- you know, like in Dudley.

17 Q Mm-hmm.

18 A Like he doesn't want us to be outside and  
19 stuff like that, like how, you know, the little --  
20 the other people that be outside in Dudley and  
21 stuff like that.

22 Q Yeah.

23 A He wants us to be better than that, so --

24 Q What's his name?

25 A Mr. Charles.

1 Q Good, good, I like that. Thank you for  
2 telling me about that.

3 A Okay.

4 Q And so, when you go home, how do you get  
5 home from school at the end of the day?

6 A Take the bus.

7 Q Okay. Is it like city buses?

8 A The MBTA.

9 Q MBTA?

10 A Mm-hmm.

11 Q And I know I picked you up, I was just at  
12 your house, but who're you living with right now?

13 A My mom and my aunt and my brother.

14 Q Aunt. Okay, tell me your mom's first name.

15 A Shantea.

16 Q Tell me your aunt's first name?

17 A Shamia.

18 Q Okay. And your brother's name.

19 A James.

20 Q James. How old is James.

21 A Seventeen. He's about to be eighteen.

22 Q Oh, okay. Anyone else?

23 A No.

24 Q Okay.

25 A J [REDACTED] doesn't live with me. She was just

1 staying.

2 Q She stays. Okay.

3 A Yeah. Sometimes she stays the night, but  
4 she doesn't really -- she's my step sister.

5 Q Yeah.

6 A Not real sister but -

7 Q Okay. I can't remember how old J [REDACTED] is.

8 A She's eighteen.

9 Q She's eighteen. Okay. So, she's a little  
10 older than you?

11 A Yeah. She just turned eighteen because her  
12 party -- she had a party at my house.

13 Q Oh, wow.

14 A Yeah.

15 Q How was it?

16 A It was good.

17 Q Good. Well, I'm sure some of this you kind  
18 of remember that I asked personal questions --

19 A Mm-hmm.

20 Q -- and I kind of asked detailed questions,  
21 and I'm going to remind you that it's okay if  
22 you're not ready to talk about something. You can  
23 tell me that.

24 A Mm-hmm.

25 Q Okay. Or if something is too hard to talk

1 about, you just let me know.

2 Also if you're worried about anything or  
3 worried about talking about anything, let me know,  
4 too, and we can talk about that. Okay?

5 A Mm-hmm.

6 Q And just kind of the last thing, because  
7 I know you're in school right now and I just want  
8 to make sure you know, this is not a test, there  
9 is no right or wrong answer, just whatever you  
10 remember, and whatever you're comfortable telling  
11 me about; okay?

12 A Okay.

13 Q Okay. You told me last time we talked,  
14 D [REDACTED], that someone had done something to you  
15 named Maurice?

16 A Yeah.

17 Q How do you know Maurice?

18 A Because of my aunt. Her name is Quida.

19 Q Quida, okay.

20 A Yeah. And she -- I used to stay at her  
21 house, like all the time.

22 Q Mm-hmm.

23 A And he'll be over there because that's  
24 Quida's brother.

25 Q That's Quida's brother; okay.

1       A       So, yeah, so, he'll be over there.

2               And like one day when I was over there,  
3       she introduced me to him, and I was like okay,  
4       whatever.

5       Q       How old were you do you think when you got  
6       introduced to him, just about?

7       A       I mean, it was -- I was fifteen.

8       Q       Fifteen; okay.

9       A       Yes. It was last year.

10      Q       It was last year?

11      A       Yeah.

12      Q       And where were you? Like whose house were  
13      you at when you got introduced to him?

14      A       Quida's house.

15      Q       Where did she live?

16      A       She -- well, no, she doesn't -- she moved  
17      now --

18      Q       Mm-hmm.

19      A       But she was living on Normandy Street.

20      Q       Normandy?

21      A       No. Wait, wait, wait, wait.

22      Q       That's okay.

23      A       Wait, let me think. I'm trying to think.

24               I'm trying to think. I think I had another  
25      street before that. Oh, no, she was on Barry

1 Street when I met him.

2 Q Okay.

3 A She was on Barry Street.

4 Q Do you know who else was living there?

5 A She has six kids living with her.

6 Q Oh.

7 A Because she has six kids.

8 Q Do you think you could tell me the six kids'

9 names?

10 A Yeah. I know all of their names.

11 Q Okay. Go ahead.

12 A Tavaris.

13 Q Okay.

14 A Emoni.

15 Q Okay.

16 A Josiah.

17 Q I know I spelled that wrong.

18 A It was H at the end, and it's okay.

19 Darius.

20 Q If I make mistakes, you can absolutely tell

21 me; okay? Darius.

22 A Keyonne. How much is that, oh and Taymoni.

23 Q Taymoni. So, can you tell me, is Tavaris a

24 boy or a girl?

25 A Boy.



1 Q And do you know how old he is?

2 A He just turned thirteen yesterday.

3 Q Okay. Oh, wow.

4 A Emoni, she's four.

5 Q Okay.

6 A And that's a girl there. Josiah's a girl.

7 She's three.

8 Q Three.

9 A Darius is, how old is Darius, he's eleven.

10 Q Okay.

11 A Yeah.

12 Q I'm sorry, eleven, a boy. Yeah.

13 A Keyonne is twenty.

14 Q Twenty, wow. That's a boy; right?

15 A No. Actually he's twenty-one. I meant to

16 say twenty-one.

17 Q That's okay.

18 A Because he just turned twenty-one after my

19 sister.

20 Q Oh.

21 A Which was on September 10<sup>th</sup>. And who's that,

22 Teymoni?

23 Q Yeah.

24 A She's six.

25 Q She is six. Okay. Awesome.

1       A       And that's a girl.

2       Q       Yes.   Okay.   Girl.

3       A       Okay.

4       Q       Any other kids besides hers that were living

5       there?

6       A       No, that was it.

7       Q       Okay.   How about any other grown ups besides

8       Quida and Maurice?

9       A       Quida and Maurice?

10      Q       Yes, sorry.

11      A       It used to be her friends, like her friends

12      used to come over sometimes.

13      Q       Mm-hmm.

14      A       And you know, they used to bring their kids

15      over and you know, it was like, it was just mad

16      people over there.

17      Q       Yeah.

18      A       There was cousins, there was lot of people

19      over there, so.

20      Q       Okay.   Okay.   And Quida is your aunt; right?

21      A       Mm-hmm.

22      Q       Who's -- is she someone's sister, like your

23      mom's sister or your -- who's --

24      A       My mom's.

25      Q       She's your mom's sister?

1       A       Mm-hmm.

2       Q       Okay. So, when you first met Maurice, what  
3       was he like?

4       A       He wasn't -- I mean, he wasn't bad like,  
5       like I didn't think he will be like the type of  
6       person he was.

7       Q       Mm-hmm.

8       A       You know, I didn't look at him like that.

9       Q       Mm-hmm.

10      A       So, it was like, yeah. And then my aunt --  
11      one day my aunt told me to watch out for him like  
12      because he's like sneaky.

13      Q       Is that Quida?

14      A       Yeah.

15      Q       Mm-hmm.

16      A       And I was like -- and I told her okay.

17      Q       Mm-hmm.

18      A       And then, you know, I would say, still I  
19      really wasn't around him like that.

20      Q       So, she says watch out, he's sneaky.

21      A       Yeah.

22      Q       And --

23      A       She told me and my -- she told me and J [REDACTED]  
24      that.

25      Q       Okay. Okay.

1 A Because J [REDACTED] used to be at our house, too.

2 Q Okay. And then did something happen?

3 A Yeah. It was like -- it was like way after  
4 that one day when -- it was like, it was early  
5 morning, wasn't it? Yeah, it was early. I think  
6 it was like -- at least like 3:00 --

7 Q Mm-hmm.

8 A -- in the morning. And I was sleeping,  
9 me and my sister, because J [REDACTED] was there, and he  
10 like came up to like -- like he snuck up to us or  
11 whatever, and he started rubbing on my leg, and he  
12 started rubbing on her leg.

13 Q Mm-hmm.

14 A And woke up because, you know, we wanted to  
15 see like what was happening.

16 Q Mm-hmm.

17 A So, we woke up. And we seen him like go in  
18 the kitchen, so we're I'm like he had to touch us,  
19 like I'm not hearing that.

20 Like he was rubbing on my legs, so I'm not,  
21 you know and I know it wasn't nobody else because  
22 everybody else in the house was sleeping.

23 Q Okay.

24 A Besides like him. Like Keyonne was up, but  
25 like I know Keyonne wouldn't do that --

1 Q Yeah.

2 A But he was in his room, the door closed,  
3 so I knew it wasn't him.

4 Q Yeah.

5 A So, Maurice was like the only thing left.  
6 So, my sister got up and she grabbed a knife and  
7 she told him to, if she does it again --

8 Q Mm-hmm.

9 A I mean if he does it again, we're going to  
10 have a problem.

11 Q Mm-hmm.

12 A Because, you know, we was like, like I don't  
13 like, you know like -- you know, I didn't like  
14 really like, you know expect that to happen to  
15 me, like ever.

16 Q Yeah.

17 A And it's like every time somebody new comes  
18 over there, it just happens.

19 Q Yeah. I'm sorry about that. I really am.

20 A Yeah.

21 Q D[REDACTED], what room were you in when that  
22 happened?

23 A I was in the living room.

24 Q So, were you and J[REDACTED] sleeping together in  
25 the living room?

1       A       Yeah.

2       Q       What kind of thing were you on? Like were  
3       you on the floor, bed, couch?

4       A       We was on the bed.

5       Q       You were on the bed?

6       A       It was like a big bed in there.

7       Q       You wee on the bed?

8       A       You know, like you know like the ones that  
9       fold up?

10      Q       Yeah. Yeah.

11      A       It was that, and it was big, and it was  
12      enough-- like it was enough space, and me and  
13      J [REDACTED] always slept on that.

14      Q       Okay.

15      A       It was a bed.

16      Q       Got it.

17      A       And all the rest of the kids had a room.  
18      Well, some had to share a room.

19      Q       Okay. And do you remember like what part  
20      of all that woke you up, like what was it that  
21      you felt or what made you wake up?

22      A       Because he was rubbing my leg.

23      Q       Like what part of your leg was he rubbing.

24      A       Right here.

25      Q       Okay. Okay.

1       A       It was me and J [REDACTED], and then just when she  
2       woke up first, and then that's when I woke up  
3       after, and I was like -- and I was like, uh,  
4       I was like to her, I was like who's touching me.

5               And then she said oh, she was like, I was  
6       trying to ask the same thing, and I was like, oh.

7       Q       Did you see anyone in the room when you woke  
8       up and were saying that to each other?

9               Like was he still in the room?

10      A       No, he was walking toward the kitchen.

11      Q       I see.

12      A       Because there's like to sides to the kitchen.

13      Q       Okay.

14      A       But you can go this way and you can go that  
15      way.

16      Q       Okay.

17      A       He was walking around. So, we knew he was  
18      just in the living room.

19      Q       So, you could see him from the back?

20      A       Yeah.

21      Q       I see. Okay. And could you tell what he  
22      was rubbing your leg with?

23      A       No, his hand.

24      Q       His hand? And did it touch -- like were  
25      you wearing pants or shorts or -- do you remember?

1       A       I was wearing pants. Me and my sister were  
2       both wearing pants.

3       Q       Okay.

4       A       We was wearing sweat pants, though, at that  
5       time, because it was cold in her house.

6       Q       Oh okay. Did his hand stay on the outside  
7       of the sweat pants or go under?

8       A       Yeah. It stayed in the outside.

9       Q       Okay.

10      A       Because he couldn't really do nothing at  
11      that time, but yeah.

12      Q       Okay. Did you hear him say anything when  
13      he was doing that or anything?

14      A       No.

15      Q       Okay. So, you see him walking like --

16      A       Mm-hmm.

17      Q       -- through the kitchen at that point?

18      A       Yeah.

19      Q       And then what happened?

20      A       And then, that's when my sister got up and  
21      she had -- I don't know where she got the knife  
22      from, she just had a knife from somewhere --

23      Q       Mm-hmm.

24      A       And she was like, "If you do it again, we're  
25      going to have a problem."



1 Q Did she actually say that to him?

2 A Yeah.

3 Q Where -- like what room was that in?

4 A In the kitchen.

5 Q Were you able to just see that, or were you

6 there with her?

7 A Yeah, I was there.

8 Q What did he do when she said, "If you do that

9 again, we're going to have problems?"

10 A He said -- he claimed he didn't do anything.

11 Q Yeah.

12 A You know, like I wasn't hearing that but --

13 Q Yeah.

14 A -- but that's what he claimed he did.

15 Q Yeah. Okay. And then what happened right

16 after that?

17 A And then my cousin came home, my cousin

18 Keyonne.

19 Q Okay.

20 A And he was like, "What's going on," and then

21 we told him.

22 Q Mm-hmm.

23 A And he says that -- what did he say?

24 Because I told him -- me and J [REDACTED] told him

25 that Maurice touched us, and he said that -- he

1       said that we was lying or something like that,  
2       like he didn't believe us.

3               And I'm like why would I lie or something  
4       like that. He said he was only playing. Like  
5       that's not -- you don't play like that. You don't  
6       touch a little girl and play like that.

7       Q       Mm-hmm.

8       A       You know, I didn't find it like what Keyonne  
9       said.

10      Q       Is Keyonne the one that said he was only  
11      playing?

12      A       Yes.

13      Q       Oh okay. Okay.

14      A       But Keyonne don't know.

15      Q       Of course.

16      A       But then he knows -- he knows how Maurice is.

17      Q       Mm-hmm.

18      A       But Keyonne just didn't even want to like,  
19      you know, believe the story --

20      Q       Mm-hmm.

21      A       -- as we told him, and I'm like, that's not  
22      something to lie about.

23      Q       Mm-hmm.

24      A       You don't just go to somebody and say  
25      somebody touched them and then lie about it.

1 Q Yeah.

2 A I don't find it lying, because I said if  
3 somebody would have touched you, what do you think,  
4 you want somebody to believe you; right?

5 Q Mm-hmm.

6 A Exactly.

7 Q Yeah.

8 A Why would I make up a story like that?

9 Q Yeah.

10 A And I was like, you can ask my sister because  
11 she was definitely there, and my sister will tell  
12 you the same thing.

13 Q Yeah. And in fact, did J [REDACTED] tell you what  
14 part of her body he touched?

15 A Yeah. Her leg. He was rubbing on her leg,  
16 too.

17 Q Same thing.

18 A Yeah.

19 Q Okay. Anywhere else on your body --

20 A No.

21 Q -- that he touched that night?

22 A Oh, yeah, my boobsm because he was rubbing  
23 on me and I didn't like -- I was just, I knew it  
24 wasn't my sister because I knew my sister don't,  
25 you know, go like that.

1 Q Mm-hmm.

2 A And like it never -- like nothing ever  
3 happens when he's like not there, but when he's  
4 there, this always happens.

5 Q Mm-hmm.

6 A So, I'm like I knew it had to be him and  
7 he was the one who caused everything.

8 Q Now, and when he rubbed your boobs, was  
9 that also on the outside?

10 A No, it was on the inside.

11 Q Inside. Okay. Okay.

12 A And I didn't like it. It was just not --  
13 it was not okay.

14 Q Yeah.

15 A Like to me, it wasn't -- I didn't find it  
16 like funny for him --

17 Q Sure.

18 A -- to even do it. And then when like I told  
19 my cousin, I was kind of like heartbroken because  
20 he said we was like lying like --

21 Q Mm-hmm.

22 A I don't need to lie about something like  
23 that.

24 Q Mm-hmm.

25 A That's just not --

1 Q Mm-hmm. And I know you know it was Maurice  
2 when you --  
3 A Yeah.  
4 Q So, I'm going to ask you, when you opened  
5 your eyes, did you see him?  
6 A I saw him getting up.  
7 Q You did see him getting up?  
8 A Yeah.  
9 Q Okay.  
10 A So, I knew it was him.  
11 Q From the bed?  
12 A Yeah.  
13 Q Okay. Okay.  
14 A I knew it was him.  
15 Q Okay. And did you see any part of what  
16 happened to J [REDACTED]?  
17 A No.  
18 Q Okay.  
19 A I just knew like, when I just got up, I just  
20 knew he was like leaving the living room and I'm  
21 like -  
22 Q Mm-hmm.  
23 A I'm just like that's just like weird.  
24 Q Yeah. Yeah.  
25 A And strange.

1 Q What happened after you guys had talked to  
2 Keyonne and he was, you know, saying that?

3 A We all was in the kitchen.

4 Q Yeah.

5 A And I guess they started talking about --

6 Q Was Maurice still there in the kitchen?

7 A Yeah.

8 Q Oh. Okay, okay.

9 A And I guess they got offensive because we  
10 were talking about bis and gays in the kitchen.

11 Q Mm-hmm.

12 A I can talk about it, because I know --

13 Q No. Tell me, yeah.

14 A We was talking about bis and gays, and  
15 Keyonne got offensive when Maurice that bi was  
16 just gay.

17 Q Mm-hmm.

18 A So, Maurice was like oh, -- and Keyonne left  
19 the kitchen and looked back at Maurice was like,  
20 "Oh, I think Keyonne's gay because every time we  
21 talk about, you know, bi being gay, he'll get  
22 offensive."

23 Q Mm-hmm.

24 A And I was like that don't make somebody gay  
25 but whatever. I mean, me personally, I told him

1       that I think bi is just like you like boys and  
2       girls because that's what it is.

3               And they said no -- he said no for boys and  
4       gay and I'm like, okay, that's what you think but  
5       everybody else think different.

6       Q       Mm-hmm.

7       A       But like his -- it was like way before that,  
8       his brother already told him that Keyonne was gay,  
9       but I didn't believe it. I just knew he had gay  
10      tendencies.

11     Q       Okay.

12     A       So, like no, I didn't really believe it.

13     Q       Mm-hmm.

14     A       So, when Maurice was telling me he was gay  
15      too, so I'm like why's everybody telling me he was  
16      gay, I don't know.

17     Q       Mm-hmm.

18     A       Like he didn't seem gay, but you know.

19     Q       Yeah.

20     A       And the they was still arguing about that.

21               And then Maurice had his thing out, like  
22      holding it. Like when nobody peeked at him, me  
23      and my sister was like, we peeked at it, and then  
24      it was just like nasty, but we peeked at it when  
25      we was when we was in the kitchen.

1           When we was sitting down on the chairs, --

2       Q       Yeah.

3       A       -- we peeked it, and I guess Keyonne didn't  
4       see it.

5       Q       I see. So, tell me how you guys were in the  
6       kitchen?

7       A       Okay. So, me and my sister were sitting  
8       at the table. There was two chairs at the table,  
9       and Maurice was like near the counter, like it  
10      was like right there.

11      Q       Okay.

12      A       And Keyonne was standing over there, like  
13      over here and he had like the door way.

14      Q       Yeah.

15      A       So, he didn't really see what Maurice was  
16      doing.

17      Q       Was Maurice sitting or standing?

18      A       He was standing.

19      Q       He was standing?

20      A       Yeah.

21      Q       Okay.

22      A       And Keyonne didn't even see what he was  
23      doing.

24      Q       How was it -- what did he have on for like  
25      what clothes? Pants?



1       A       Yeah, he had clothes. He had pants, and  
2       he had no shirt.

3       Q       No shirt. Okay.

4       A       He had pants on, though.

5       Q       And what part of his body could you see,  
6       like when you say his thing was out?

7       A       His --

8       Q       You can say it.

9       A       His dick.

10      Q       Okay.

11      A       And he was holding it and it was just --

12      Q       Was it like over the top of his waistband?

13      A       Yeah. It was over the top of his pants,  
14      and he was holding it.

15               Like you can like literally see it, because  
16      my sister was the one who spotted it first. I  
17      didn't know like it was out, because I wasn't  
18      really paying attention to him, so I didn't know  
19      it was out.

20      Q       Yeah. So, when she spotted it, what did  
21      she do?

22      A       She was just like, she just, she didn't say  
23      nothing, we didn't say nothing.

24      Q       Okay.

25      A       I was getting ready to say nothing --

1 Q Yeah.

2 A But you know, I just kept quiet. But I just  
3 know that it was out because she told me.

4 Q Okay. And she told you?

5 A No. Yeah, J [REDACTED] told me. J [REDACTED] told me that  
6 it was out and then we didn't say nothing.

7 Q Yeah.

8 A We just kept our mouth shut.

9 Q But you also saw it with your eyes?

10 A Yes.

11 Q Okay. Okay. And was he doing anything with  
12 his hand? Was he just holding it?

13 A No, he was just holding it out. You know,  
14 I didn't really -- I didn't really like long look  
15 at him because it was just so nasty.

16 Q Yeah. Sure.

17 A The simple fact that he just did that.

18 Q Yeah.

19 A That's why I don't even like being around  
20 him a lot.

21 And he used to like -- because he had like,  
22 he'll have like our phone numbers if anything,  
23 like, you know, to call, you know how like we  
24 have --

25 Q Yeah.

1       A       So, like he has our phone numbers and  
2       everything, and he'll text like sexual stuff like,  
3       "If you have sex with me, I'll give you \$20," and  
4       stuff like that.

5       Q       Okay.

6       A       Like I was some type of, you know, -- like  
7       I was never like that, like I told him no and  
8       stuff like that.

9       Q       Mm-hmm.

10      A       Because he knows he's too older. You know,  
11      he used to text me, my sister and my cousin --  
12      my cousin, [REDACTED]

13      Q       Okay. So, he would text you, J[REDACTED]?

14      A       Yeah. And my cousin, [REDACTED]

15      Q       Okay. I'm going to do a text paper here.  
16      You, J[REDACTED], and [REDACTED] How old is [REDACTED]

17      A       [REDACTED] is eighteen.

18      Q       Okay. I definitely want to talk about that,  
19      but can you tell me, after you guys were in the  
20      kitchen, what happened after the argument or  
21      conversation about all that stuff.

22              Then what happened?

23      A       After that, we just got on different topic  
24      about -- I'm trying to think -- what we talking  
25      about after that? We were talking about something.

1 I'm trying to think. What was we talking about?

2 Q It's okay if you don't remember what you  
3 were talking about?

4 A No. I really -- I don't.

5 Q That's okay.

6 A I just know we was talking about something  
7 else, and then that's when we left -- me and J [REDACTED]  
8 left the kitchen because the doorbell was ringing  
9 and we went to go see who it is, and it was  
10 Shamia's son.

11 Q Okay.

12 A Shamia's son named Kevonte.

13 Q Okay.

14 A And then Keyonne's brother, Troy, the one  
15 that told us that Keyonne was gay before.

16 Q Okay. So, Troy and Kevonte.

17 A Kevonte.

18 Q Kevonte. Yeah.

19 A Mm-hmm.

20 Q Okay.

21 A And they came in and everybody was in the  
22 kitchen, we was all talking.

23 Q Mm-hmm.

24 A I forgot. Oh, they was talking about how  
25 they was drunk and all this type of stuff, and

1       they didn't know what they was doing.

2       Q       Mm-hmm.

3       A       Kevonte and Troy said that they didn't know  
4       what they was doing and this and that, but he  
5       didn't have thing out at the time.

6       Q       Oh, okay.

7       A       Maurice, he just -- he put it back.

8       Q       Like put it away.

9       A       Yeah.

10      Q       Okay.

11      A       So, we were just all in the kitchen talking  
12      about how they were drunk and everything, and then  
13      Kevonte went in the bedroom and went to sleep.

14      Q       Okay.

15      A       And Troy went in Keyonne's room, and he was  
16      both sleeping, so then it was us three up again.

17      Q       Mm-hmm.

18      A       And then Quida woke up, and then she only  
19      went to the bathroom and she went back to sleep,  
20      and she asked us what was we doing.

21      Q       Mm-hmm.

22      A       What was all of us doing. I said we was  
23      just talking and stuff.

24      Q       Mm-hmm.

25      A       So, she went back to sleep. And then I

1       remember telling Quida --

2       Q       Okay.

3       A       -- like that Maurice like, you know, touched  
4       us or whatever, and she called me a liar and said  
5       that I didn't say that or whatever.

6               But I remember telling -- no, I told J [REDACTED]  
7       to do it, because J [REDACTED] was like, oh she's going  
8       to do it.

9       Q       Okay.

10      A       Because I was going to do it at first but  
11      J [REDACTED] said she was going to do it, so J [REDACTED] went  
12      to talk to Quida and told her --

13      Q       Was it that night?

14      A       Yeah.

15      Q       When it happened?

16      A       Yeah.

17      Q       Okay.

18      A       And then that's when we told Keyonne, and  
19      then Keyonne said we were just joking.

20      Q       I see. So, do you know which one of them  
21      J [REDACTED] told first, like if it was Quida first?

22      A       Quida. She talked to Quida first.

23      Q       Okay.

24      A       And then she talked to Keyonne. Then we  
25      both talked to Keyonne after, because Keyonne

1 was in the room --

2 Q Okay.

3 A -- with the door closed, and we came in and  
4 we told him, and that's when he thought it was a  
5 joke or whatever.

6 Q And D [REDACTED], did you ever talk to Quida  
7 about it that night?

8 A Quida knew -- yeah, I talk to Quida about  
9 everything, so Quida knew like the simple fact  
10 that how he was and --

11 Q Mm-hmm.

12 A -- like he used to text us and stuff like  
13 that, and I told Quida about how he is used to do  
14 that.

15 Q Okay. Okay. And on that night when it  
16 happened, it was J [REDACTED] that went to Quida --

17 A Yeah.

18 Q -- and you then you both went to Keyonne?

19 A To Keyonne, yeah.

20 Q Okay. Okay. So, did anything else happen  
21 that night?

22 A No.

23 Q Did Maurice do anything else on that night?

24 A No. Because we was up basically like through  
25 the day.

1 Q Oh, okay.

2 A So, he didn't really do nothing.

3 Q Now, after that night, were there other  
4 either days or nights that you would stay over  
5 there and something else would happen?

6 A Yeah. I used to like -- I used to kind of  
7 live with Quida.

8 Q Okay.

9 A And one day, like I was lying down, and I  
10 was lying down in the bed in the living room, and  
11 I felt someone pulling down my pants, and I knew  
12 like it had to be him because he was there.

13 Q Mm-hmm.

14 A And then like, I was just felt somebody  
15 like rubbing, like all the way up in my leg and  
16 rubbing down, and I was just like -- I woke up  
17 like to see, you know, what's going on, and then  
18 I see him sitting next to me, and I'm like, I'm  
19 like, "What are you doing?"

20 Q Sitting on the bed.

21 A Yeah.

22 Q Okay.

23 A I'm just like, "What are you doing? Like  
24 this is not okay."

25 And then like he tried to like take me off



1 the bed and stuff like that, --

2 Q Okay.

3 A -- and tried to like, you know, do it with  
4 me, but like I just didn't like let that happen.

5 Q So, D [REDACTED], do you think you could actually  
6 tell me kind of step by step what he did?

7 So, when you're on the bed that day, do you  
8 know if it was morning or night?

9 A It was night.

10 Q It was night. Okay.

11 A It was like everyone was sleeping.

12 Q How did it start? What's the first thing  
13 that he did?

14 A He came in the living room.

15 Q Yeah.

16 A And then he pulled the covers off of me  
17 because I had covers on me.

18 Q Okay.

19 A He pulled the covers off of me, and like  
20 I didn't feel that, like --

21 Q Mm-hmm.

22 A -- because I knew like -- like I was just  
23 like sleeping and then like --

24 Q Yeah.

25 A Like I can feel when somebody touches me

1       because, you know, I wake up easily.

2       Q       Yeah.

3       A       So, then like I felt somebody pulling down

4       my pants.

5       Q       Okay.

6       A       So, I was just like what's going on --

7       Q       Mm-hmm.

8       A       And then he started rubbing on my leg.

9       Q       Okay.

10      A       And doing stuff like that.

11      Q       Now, you are going like this. Was it there?

12      A       Yeah. And we were --

13      Q       Anywhere else on your leg?

14      A       No, he just started rubbing right here.

15      Q       Okay.

16      A       And then he picked me up.

17      Q       Okay.

18      A       Like, he picked me up. He picked me up,

19      but like you know like, I didn't let him get far.

20      Like he just picked me up and then --

21      Q       Like off the bed?

22      A       Yeah.

23      Q       Okay. Okay.

24      A       And then I told him like, I was like, "What

25      are you doing," and he was telling me to shush,

1 and I'm like no. And then I pulled my pants  
2 back up --

3 Q Okay.

4 A -- and I went to the bathroom after, and he  
5 then he'll be standing -- like he was standing  
6 outside the bathroom waiting for me.

7 I don't know why, but he was just standing  
8 there.

9 Q So, when he picked you up off the bed, how  
10 far did he get with you?

11 A In the kitchen.

12 Q He got to the kitchen?

13 A He just went into the kitchen because it  
14 was like right there.

15 Q Okay. Did he have clothes on when he was  
16 doing that?

17 A Yeah.

18 Q Okay. So, you got to the kitchen, and what  
19 happened in the kitchen when he got you to the  
20 kitchen?

21 A I told -- I asked him what was he was doing,  
22 and he told me to shush, and I said no.

23 Q Mm-hmm.

24 A And I told him like, "You should let me  
25 sleep. Why are you touching me?"

1 Q Mm-hmm.

2 A And he said because he can, right, you know.  
3 I told him that, no you can't like --

4 Q Mm-hm.

5 A -- like I don't know what you're talking  
6 about.

7 Q Mm-hmm.

8 A No, you can't. Oh, yeah, and then I asked  
9 him, I said, I asked him one day, I asked him,  
10 does he like younger girls or older girls?

11 Q Mm-hmm.

12 A I asked him that day.

13 Q Mm-hmm.

14 A And he said younger, and I just like, you  
15 know, walked out of the kitchen because like it's  
16 just not, it's just nasty.

17 Q Mm-hmm.

18 A So, I was like, you know, I was like before  
19 I walked out I said, older or like younger girls.  
20 He said how old are we talking, like fifteen and  
21 down or fifteen and up.

22 Q Mm-hmm.

23 A And he said fifteen and up, and you know,  
24 I was fifteen, so I felt kind of weird.

25 Q Mm-hmm.

1       A       So, went to the bathroom and came back,  
2       and he was just still standing there, like outside  
3       the bathroom.

4       Q       Okay. Did he go in at all to the bathroom  
5       with you?

6       A       No. He just stood outside.

7       Q       So, you just came out, he's standing there.

8       A       Yeah.

9       Q       Still had clothes on?

10      A       Yeah.

11      Q       Okay. And what happened?

12      A       And then, I went to go lay back down and  
13      he told me to come in my cousin's room, because  
14      like it was like empty, and he told me to come  
15      in there --

16      Q       Right.

17      A       -- and I was like, "What for?"

18      Q       And he was like, "You'll see."

19      A       And I didn't go in there.

20      Q       Mm-hmm.

21      Q       Like I just like, you know, laid down and  
22      then I was still sitting there.

23              And then he's just like, he was like,  
24      "So, why didn't you get up?" And I told him  
25      because I don't, you know, I didn't want to and

1       whatever --

2       Q       Mm-hmm.

3       A       -- because you know, the simple fact that

4       he knew what he was doing, but like -- and I knew

5       what he was doing, too.

6       Q       Mm-hmm.

7       A       That's why I didn't, you know, get up and --

8       Q       Mm-hmm.

9       A       -- and everything, because I knew what he

10      was trying to do.

11      Q       Right.

12      A       So, I just stayed there, and then my cousin

13      woke up, my little cousin, Josiah.

14      Q       Okay.

15      A       She woke up.

16      Q       Okay. Josiah.

17      A       Yes. She woke up.

18      Q       Okay.

19      A       And I had to try to put her back to sleep.

20      Q       Okay.

21      A       Because yeah. And then he was there, and he

22      was like standing behind me. You know how like --

23      you know, like a mother or like getting up --

24      Q       Mm-hmm.

25      A       Yeah, and he was standing behind me like,

1       you know, putting like -- having his hand on my  
2       shoulder, and I'm like, "What are you doing?"  
3       I'm like, "Can you get off me, like I'm trying to  
4       put Josiah to sleep."

5       Q       Mm-hmm.

6       A       And he's like, "I'll help you."

7       Q       Was this like Josiah's room?

8       A       Yeah.

9       Q       Okay.

10      A       And he was like, "I'll help you." I was like  
11      no. I was like, "I don't need your help."

12             And he turned on a light, and I turned it  
13      back off because I'm like, "What are you doing?"  
14      And I'm like, "I'm trying to put her to sleep and  
15      you're turning on the light. That ain't going to  
16      help."

17             And then he left the room, and then I went  
18      in Quida's room and I told her to tell Maurice to  
19      leave me alone.

20      Q       Mm-hmm.

21      A       Because he kept bothering me.

22      Q       Mm-hmm.

23      A       So, she called Maurice in there and then she  
24      like, "What are you doing?" He claimed he was  
25      doing nothing.

1 Q Mm-hmm.

2 A Which was a whole lie.

3 Q Mm-hmm.

4 A And I still had Josiah, and went back into  
5 the living room to put her to sleep, and me and  
6 her went to sleep.

7 Q Okay. Okay. So, Quida tells him or --

8 A No. I don't know what Quida said.

9 Q You don't know what she said?

10 A Yeah. I don't know what she said.

11 Q Okay.

12 A But I told her like to tell -- to get  
13 Maurice, because he was being annoying.

14 Q Did he bother you anymore that night?

15 A No.

16 Q Okay.

17 A No, because Quida was up.

18 Q Okay. Quida was up?

19 A She took her nap. She just only needed to  
20 take a nap, so she was up after that.

21 Q Okay. And I want to make sure I know where  
22 he touched you on that day or night because you  
23 said it started on your legs --

24 A Yeah.

25 Q -- and I know he picked you up and took



1       you to the kitchen?

2       A       Yeah.

3       Q       Was he touching you at all on like the way  
4       to the kitchen or in the kitchen?

5       A       No.

6       Q       Okay. How about when you came out of the  
7       bathroom, any touching then?

8       A       No. He just slapped my butt, like it was  
9       so weird because it's like, I'm like -- well, it  
10      doesn't even like -- I mean, I don't really like  
11      when boys do that anyways but like --

12      Q       Mm-hmm.

13      A       -- I mean, at least let it be a boy my age.

14      Q       Mm-hmm.

15      A       Like you know, he wasn't my age, so like  
16      I wasn't really interested in him so it was like --

17      Q       But he slapped your butt that night?

18      A       Yeah.

19      Q       Okay. And then when he was behind you and  
20      you were trying to put Josiah to sleep, --

21      A       He was just rubbing on my butt.

22      Q       Rubbing on your butt?

23      A       Mm-hmm.

24      Q       What part of him was rubbing on your butt?

25      A       Hand. His hands.

1 Q His hands; okay. And again, was that on  
2 the outside of your pants or inside?

3 A The inside.

4 Q Okay. Did he touch anywhere else that night?

5 A No.

6 Q Okay. So, you went back to bed with Josiah  
7 in the living room?

8 A Yeah. Mm-hmm.

9 Q Okay. Anything else on that night?

10 A No.

11 Q Okay. How about after that night?

12 A After that night, J [REDACTED] came back over, and  
13 -- no, it wasn't J [REDACTED], it was [REDACTED]  
14 [REDACTED] came over because it was like, I know  
15 I remember it being a Friday.

16 Q Okay.

17 A A Friday and [REDACTED] came over.

18 Q Okay.

19 A And he'll text her, like he had her number  
20 and he'll text her, --

21 Q Okay.

22 A -- text her, talking, saying the same thing  
23 that I told you earlier like how can we do that  
24 for -- yeah, like he'll text her the same thing  
25 he'll text me --

1 Q Yeah.

2 A And then my sister will call me and tell me  
3 she got a text and it was saying the same thing.

4 Q Mm-hmm.

5 A So, I'm like, what's he trying to get out  
6 of all this like --

7 Q Mm-hmm.

8 A You know, like he keeps texting, I'm like,  
9 it's not even okay, like I don't understand.

10 Q Well, let's talk about the texts.

11 A Mm-hmm.

12 Q Did that start -- so, I know this first  
13 night that he touched both of you together, --

14 A Yeah.

15 Q -- the night J [REDACTED] grabbed the knife.

16 A Mm-hmm.

17 Q Had he texted you at all before that, do  
18 you remember?

19 A No.

20 Q Okay. Was it after that?

21 A After that. Yeah.

22 Q So, when he would text you, was it a phone  
23 number?

24 A My phone number.

25 Q It was? Do you know what phone number

1       you had?

2       A       What I had?

3       Q       Yeah. You know what yours was?

4       A       I forgot what mine was, but I had a --

5       which one because I had this new phone.

6               Oh, it was on 857 --

7       Q       Mm-hmm.

8       A       -- 246 --

9       Q       Mm-hmm.

10      A       What is it -- I forget now.

11      Q       Would it help to look at a phone?

12      A       Huh?

13      Q       Would it help to look at a phone number?

14      A       Yeah.

15      Q       Let me see.

16      A       I'm trying to think because I remember it.

17      Q       Sure.

18      A       Because it's my Facebook e-mail. 857-246-

19      0564. Yeah, that's what it is.

20      Q       Oh wait. What is it?

21      A       0564.

22      Q       0564. Got it.

23      A       Yeah, he used to text me from that number.

24      I don't have it no more, but he used to text me

25      from that number.

1 Q Did you happen to know what his number was?

2 A No.

3 Q Do you know what it started with, if it was

4 an 857?

5 A 857.

6 Q It was an 857?

7 A Mm-hmm.

8 Q Okay. So, when he would text you, tell me

9 what they would say?

10 A So, he'll be like -- he would tell me --

11 he'll say hi and then I'll say hi back, and then

12 he'll say, "What are you doing?" And I'll say like

13 you know, either I'm with [REDACTED] sometimes or J [REDACTED]

14 so I say I'm with [REDACTED] because that's the day he

15 texted me on a Friday.

16 Q Oh, okay.

17 A He said, "What are you all doing?"

18 Q Mm-hmm.

19 A And I said we're watching TV because that's

20 what we was doing, watching TV, and Keyonee --

21 because Keyonne, he went to work and he's gone.

22 Q Mm-hmm.

23 A So, like it was just me -- and would be me

24 -- it was [REDACTED] Josiah, and Jay Tay.

25 Q Okay.

1 A Well, Teymoni. We was all in his room,  
2 we was watching TV.

3 Q Mm-hmm.

4 A And he'll just be texting me, and I just be  
5 like, "[REDACTED] have you seen this? Like why is he  
6 texting me?" She's like, "I don't even know."

7 And then he'll be like, "Do you want to have  
8 sex with me," and this, that and the third, and  
9 I told no. And he's like, "I'll give you money."

10 Q Mm-hmm.

11 A He'll say that to [REDACTED] like he'll text  
12 [REDACTED] He texted [REDACTED] the same day and he asked  
13 her the same question but later that day.

14 Q Okay.

15 A Two hours after that.

16 Q So, when you were sitting there and he was  
17 texting you --

18 A Yeah.

19 Q Did [REDACTED] see it, too?

20 A Yeah.

21 Q Did you show her?

22 A Yeah.

23 Q And he said -- did he use those words,  
24 "Will you have sex with me," or did he say  
25 something else?

1       A       No. He said, "Would you have sex with me,"  
2       you know, and I tell him no.

3       Q       Mm-hmm.

4       A       Because I was like not okay. Like me, I was  
5       never like -- you know, like worried about that,  
6       when I was fifteen years old so.

7       Q       And I want to make sure you know, nothing  
8       you said or did, you're not in any trouble.

9               It's always the grown-up's responsibility,  
10       not yours, so no matter what you said or did, or  
11       said back to him, there is nothing wrong.

12       A       No, I never flirted with him back because  
13       he was just not --

14       Q       Okay. I just want you to know that it  
15       would have been okay if you did.

16       A       No, I didn't.

17       Q       Okay.

18       A       No, I never did.

19       Q       Okay.

20       A       Sometimes I'll just leave it there, like  
21       when he texts me, I'll just leave it there.

22       Q       Yeah.

23       A       I just won't say nothing, I won't reply --

24       Q       Okay.

25       A       -- and stuff like that. He'd be like,

1 "Did you see my message," and I'd be like no.

2 Q Mm-hmm.

3 A Like, I just -- you know, I don't really

4 reply to half of the stuff that he sends to me.

5 Q Mm-hmm.

6 A And he texted [REDACTED] later that day and [REDACTED]

7 showed me, and she's like, "Why is he texting me

8 now," and I said, "I don't know."

9 Q What did you see on [REDACTED] phone that he

10 said?

11 A He asked the same question that he asked me.

12 Q "Will you have sex with me?"

13 A Yeah. And [REDACTED] replied no.

14 Q Okay.

15 A Like she said, "No, I would not."

16 Q Okay.

17 A And then he's like, "Why not?" And [REDACTED]

18 said, "Because you're a grown man and you're

19 trying to have sex with little kids."

20 Q Mm-hmm. And did he say anything?

21 A And [REDACTED] was not eighteen at the time.

22 Q Okay.

23 A She's eighteen now.

24 Q Okay.

25 A She was seventeen.



1 Q Actually, do you remember -- so, I don't  
2 need the date or anything, but do you know if you  
3 were in school at the time when these texts were  
4 happening, or like what grade you were in, what  
5 time of the year it was?

6 Can you think of anything that was happening  
7 around that time?

8 A I was in eighth grade.

9 Q You were in eighth grade; okay.

10 A Yeah. Because I still went to the Pilot.  
11 So, I was going to the eighth grade.

12 Q Okay. Eighth grade, Pilot.

13 A And [REDACTED] was going to the Smith, and she  
14 was in eighth grade with me, so we was both in  
15 eighth grade together.

16 Q Okay.

17 A And we was in school. We was in school.

18 Q It was still school year?

19 A Wait, I'm trying to think, but I don't think  
20 it was, but then again, I think it was.

21 Yeah, it was, because -- yeah, it was,  
22 because we was both in school.

23 Q Okay.

24 A She used to go to school from my aunt's  
25 house when she slept over.

1           So, we were both in school.

2       Q       Okay. Now, I know you said, when the night  
3       he touched you, it was cold in the house or you  
4       would wear --

5       A       Yeah. I remember like it was freezing in  
6       her house.

7       Q       So, does that make you think it was in the  
8       winter time? Because sometimes houses can be cold  
9       even when it's not winter?

10      A       It was.

11      Q       It was winter?

12      A       It was cold outside.

13      Q       It was cold outside?

14      A       It was cold. It was winter.

15      Q       Okay.

16      A       So, it was freezing outside?

17      Q       Okay. So, when you saw [REDACTED] text that  
18      he was sending to her, did he say anything about  
19      money to her?

20      A       Yeah.

21      Q       Oh.

22      A       He said -- he'll say the same thing that he  
23      said to me to her.

24      Q       Same thing. Okay.

25      A       And like I would just be like what is he,

1       what is he doing, like what does he look like?

2       Q       Yeah.

3       A       And like I already knew like something was  
4       you know, like already like going on between  
5       that --

6       Q       Mm-hmm.

7       A       -- because the simple fact that he just kept  
8       texting us and all that stuff so I just knew that  
9       he was already, you know.

10      Q       Yeah.

11      A       So, I just been there like, you know I just  
12      kept my mouth closed, because Quida didn't think  
13      that we knew what -- you know what he was and like  
14      what was going on.

15      Q       Mm-hmm.

16      A       But we really did. Like we just kept our  
17      mouth shut, like we didn't want to say nothing  
18      for the simple fact.

19              But it was just like, I mean, I can't just  
20      like go out, you know, and start telling people  
21      like my business --

22      Q       Yeah.

23      A       So, basically I just keep it in --

24      Q       Yeah.

25      A       -- or whatever the case maybe.

1 Q Yeah.

2 A So, I just kept it in. But like the King  
3 thing, it was just like -- I didn't think it was  
4 going to happen either.

5 Q Mm-hmm.

6 A Like I never think like some of these people  
7 would be like that.

8 Q Right.

9 A But when I felt, though -- like I just  
10 didn't know why Shamia like came back in, because  
11 when I found the simple fact that he touched her  
12 daughter, it was just not -- I mean, I didn't think  
13 it was cool because of the simple fact that he did  
14 and she still let him back in the house.

15 Q Right.

16 A I didn't think it would be cool because  
17 then he started touching on my little sister --

18 Q Right.

19 A -- and stuff like that. So, I like didn't  
20 find it you know, cool or whatever.

21 He used to like start beating on my sister  
22 like they was like, you know, his kids or whatever  
23 and like --

24 Q Mm-hmm.

25 A I don't understand like --

1 Q Yeah.

2 A I didn't like it. Like I always defended  
3 my sisters.

4 When he used to do that, I always be there  
5 to defend my sisters, me and my brother. Because  
6 my brother and him had a fight one day --

7 Q Mm-hmm.

8 A -- because of the simple fact that he --  
9 you know, hit my sister over his dog eating  
10 chicken bones. Like that's your dog. We're not  
11 responsible for your dog --

12 Q Right.

13 A -- if your dog's doing that. So, I told him  
14 that, and I told him not to touch my sister again  
15 or we're going to have problems, and he said,  
16 "Oh well, tell your sister not to give my dog a  
17 chicken bone." I said, "Why don't watch your dog  
18 next time."

19 Q Yeah. Yeah.

20 A It's your dog, like we're not responsible  
21 for your things. That's your things, so and your  
22 dog's eating it, that's one of your dog.

23 Q Yeah.

24 A Because that's what dogs do, they eat all  
25 trash.

1 Q Yeah.

2 A So, if you don't clean up the trash that's  
3 on you. We can't stop your dog from eating no  
4 trash.

5 Q I remember you telling me how you defended  
6 her that day.

7 A Yeah.

8 Q I remember that, yeah. And I remember you  
9 telling me about your brother.

10 A Yeah. We both defended him -- her that day.

11 Q Yeah.

12 A Because why would you put your hands on her?  
13 She was only eight years old. What are you doing?

14 Q Yeah.

15 A She's young like, you can't just hit her  
16 because of the simple fact that your dog ate --  
17 and I was in the kitchen the whole time, so I  
18 know she didn't give it to him, I mean to her,  
19 because it was a her.

20 Q Oh, yeah.

21 A But I knew that she didn't give it to her.  
22 She found it in the trash on the floor and she  
23 started eating it. That's not my problem.

24 Q Right.

25 A That's what dogs do.

1 Q I know. D [REDACTED], let me ask you a little  
2 bit more about Maurice; okay?

3 A Mm-hmm.

4 Q Any other text messages that he would send?  
5 Or let me ask you this.

6 Did he send a text on more than one day?  
7 Like would he do it all the time?

8 A No, he wouldn't do it all the time.

9 Q Okay.

10 A He'll just do it like -- like if I'm by  
11 myself, he'll do it.

12 Q Okay.

13 A He'll send it, like if I'm in a room, but  
14 not with J [REDACTED] or Keyonne, he'll send it.

15 Q Will he send it from inside the house?

16 A Yeah.

17 Q Even though you're in the same house?

18 A Yeah.

19 Q I see. Okay.

20 A Yeah. He'll send it in the same house, but  
21 in Quida's room. He'll be in Quida's room or in  
22 the kitchen, he'll send it.

23 Q Okay.

24 A And me and her will be in either the living  
25 room sometimes or most likely we're always in

1 Keyonne's room.

2 Q Okay. And did he ever send any pictures or  
3 anything?

4 A No, he would never send pictures.

5 Q Okay.

6 A He would just send texts.

7 Q Did he ever ask you for pictures?

8 A Yeah.

9 Q Tell me about that?

10 A So, like we was in the room and he was like,  
11 oh, can I send you a picture of me naked?

12 And I was like, "Sorry I don't take pictures  
13 like that."

14 Q Now wait. Did he say that or did he type  
15 that?

16 A He texted me.

17 Q He texted that. Okay.

18 A Yeah. And I was like no, and I was like,  
19 "First of all, I don't send people pictures like  
20 that because I don't really think it's okay."

21 Q Okay. Mm-hmm.

22 A I don't know -- I just heard that like it's  
23 child pornography or something like that.

24 Q Mm-hmm.

25 A So, I don't really send pictures like,



1       you know, I don't really do that because I don't  
2       really find that cute for people to be exposing  
3       their body like that.

4       Q       Mm-hmm.

5       A       So, I don't do that personally, and I don't  
6       think it's good for other people do it.

7               So, yeah, when he asked me that, I was like  
8       no, and he asked me why, and I told him because  
9       the simple fact that like it's nasty and it's  
10      gross, like why would I want to send you a picture  
11      of myself out of all people.

12      Q       Mm-hmm.

13      A       And then he asked [REDACTED] that day -- the same  
14      day he asked [REDACTED] and [REDACTED] told no again because  
15      [REDACTED] like why is he asking -- like she was like  
16      what does he want from us?

17              I say I don't know. I was like clearly, he  
18      wants sex from us --

19      Q       Mm-hmm.

20      A       -- because of the simple fact that he is  
21      asking us that same question.

22      Q       Yeah.

23      A       It was just annoying like --

24      Q       Yeah.

25      A       -- it's getting really annoying.

1 Q Did he -- when he asked for the picture,  
2 do you remember the word he used or how he --

3 A He said, no, he's just like, "Can you send  
4 me a naked picture of you?"

5 Q Okay. Okay.

6 A And he asked [REDACTED] the same thing.

7 Q Same thing. Okay. And do you know if she  
8 responded to him in any way?

9 A No, she didn't.

10 Q Okay.

11 A She just kept her phone on the charger and  
12 she didn't respond to it. She told me she wasn't,  
13 and I was just ignoring it the whole time.

14 Q Okay.

15 A She didn't really respond to it. She didn't  
16 respond to it. She just seen what he said but she  
17 didn't --

18 Q Mm-hmm.

19 A -- she didn't say nothing.

20 Q Okay. And how about any other things he  
21 would ask for?

22 Did he ever ask you to take a video or?

23 A No. He never asked to take a video.

24 Q Okay.

25 A It was just pictures.

1 Q Okay. Did he ever text you or message you  
2 from something else?

3 Like did he ever use Snapchat or anything  
4 else that?

5 A Oh, yeah. Snapchat.

6 Q Yeah?

7 A Snapchat.

8 Q What would he do in Snapchat?

9 A He'll ask like where we're at. Like he'll  
10 ask me --

11 Q Yeah.

12 A He didn't have [REDACTED] on Snapchat. He only  
13 had me and J [REDACTED] on Snapchat. So, he'll text me  
14 like where you at and what are you doing?

15 Q Mm-hmm.

16 A And I miss you and he'd just say that a lot.

17 Q Okay.

18 A He'll say, "I miss you, I love you," and  
19 this that and the third. And I'm just like --

20 Q Okay.

21 A -- does he know who he's texting?

22 Maybe he's texting my sister the same thing.  
23 Like me and her will be together, we'll be at the  
24 park or something. He'll text us --

25 Q Wait, who?

1 A Me and J [REDACTED].

2 Q You and J [REDACTED]? He would text J [REDACTED]?

3 A We'll be at the park --

4 Q Okay.

5 A -- and he'll tell us about the simple fact  
6 that he says he misses us, he want to see us and  
7 this, that and the third.

8 I'm like J [REDACTED], you think that kind of weird  
9 that he's saying he misses us and he seen us like  
10 that. Like I don't I get the simple fact that he  
11 even texts us more than my cousin even texts us.

12 So, it was like weird that it seems that he  
13 is texting us and just like you know, just weird  
14 about that. So, I don't know.

15 Q D [REDACTED], do you remember his Snapchat user  
16 name?

17 A It was like Maurice something.

18 Q Maurice something?

19 A Yeah.

20 Q Okay. Do you still have him connected on  
21 Snapchat?

22 A No. I think my sister does, but I don't.

23 Q Okay. You think J [REDACTED] does?

24 A Yeah.

25 Q Okay. Did he ever send any pictures on

1        Snapchat --

2        A        No.

3        Q        -- or ask for pictures?

4        A        No. He didn't ask for a Snap.

5        Q        Not on Snap?

6        A        No.

7        Q        Okay.

8        A        He just told us like he missed us and he

9        wanted to see us.

10       Q        Okay.

11       A        And where we at. That's it.

12       Q        Okay. How about anything else besides

13       Snapchat and phone number, like messenger,

14       anything?

15       A        No. He didn't -- wait let me think, because

16       he didn't have a Messenger, but I never had him on

17       Messenger so, he never text me on Messenger.

18       Q        Okay.

19       A        No, me and my sister didn't have him on

20       Messenger.

21       Q        Okay.

22       A        Me and [REDACTED] we didn't have him on --

23       we just had him on -- well, the only thing that

24       we had of his is Snapchat.

25       Q        Okay.

1       A       Oh, and he had Kick.

2       Q       He had a Kick?

3       A       Yeah, his name -- I forgot his name -- his

4       name was still like Maurice something on it.

5               It was Maurice Barry, that's what it was.

6       Q       It was Maurice Barry. Okay.

7       A       Yeah.

8       Q       Did you ever text with him on Kick? Like

9       did you --

10      A       No, I just had him on Kick but like he would

11      never text me from Kick. He would just text me

12      from his Snapchat or his number.

13      Q       Or the number. Okay. Okay.

14               How did you know he had a Kick? Was it

15      because of your --

16      A       No. Because my little cousin, when she had

17      his phone like to go to Youtube and it said Kick

18      -- it shows Kick on there.

19      Q       Oh, yeah, yeah.

20      A       And then like, I don't know how like, he

21      found my Kick for some reason. I don't know how,

22      because sometimes like when you like have

23      somebody's phone number, it will go straight there.

24      Q       Yeah.

25      A       So, like he found my Kick.

1 Q Yeah.

2 A So, he had me on Kick and whatever.

3 But like that was it. He never texted me.

4 He'll just have me J [REDACTED] on Kick but he never  
5 texted us.

6 Q Okay. Okay. And when he first was texting  
7 you or whatever on your phone number, do you know  
8 how he got your number?

9 And it's totally fine if you gave it to him.

10 A Yeah. I gave it to him.

11 Q Okay. Okay. Do you remember when he asked  
12 you it? Like where you guys were, like how did he  
13 ask for your phone number? Do you remember?

14 A We was in Keyonne's room.

15 Q And what did he say?

16 A He was like -- he was like, oh, "Can I get  
17 your phone number," and then I was like, I asked  
18 him what for and he was like, "Just in case like  
19 so I can make sure you're all okay," and this and  
20 that and the third. So, I gave it to him.

21 Q Mm-hmm. That's fine.

22 A And then J [REDACTED] gave it to him.

23 Q Mm-hmm.

24 A And that's when he'll start texting us weird  
25 stuff, so like we didn't think he will even ask

1       some questions like that.

2       Q       Mm-hmm.

3       A       But like we knew he was like that but not  
4       just like as in he was going to do it to us --

5       Q       Right.

6       A       -- or write that to us.

7       Q       Right. Now, you told me about it a couple  
8       times, that he was touching you when you were  
9       sleeping in the living room?

10      A       Mm-hmm.

11      Q       Were there more than those times?

12      A       No.

13      Q       Okay.

14      A       Because I don't really -- I usually leave  
15      like, I will only be there one day, I'll leave  
16      sometime.

17      Q       Mm-hmm.

18      A       I'll go like to my mom's friend's house.

19      Q       Okay.

20      A       So, like I won't really be there. Like  
21      me and J [REDACTED] will go -- we won't really be there,  
22      we'll just be at my mom's friend's house,  
23      sleeping over there.

24      Q       Okay. And so, any other place where you've  
25      been, where he's been, like any other family's



1 house or anywhere?

2 A No. Oh, wait. Well, of course, is baby  
3 mother's house because when I went there, he was  
4 there.

5 Q Oh.

6 A Because you know, that's where he -- you  
7 know, that's where he was. And it was me and  
8 Quida, she took -- and his baby mother's name  
9 is Courtney, so Courtney took us there.

10 Q Okay.

11 A And no, actually her sister took us there.  
12 Her sister's name is Sasha.

13 Q Sasha. Okay.

14 A Yeah, she took us there, and like he was  
15 there. And like he was smiling at me weird, like  
16 funny, like you know that type of funny?

17 Q Yeah.

18 A Yeah. He'll just smile at me and that's it.

19 Q Okay.

20 A But that's all he did.

21 Q Okay. So, nothing happened at the house?

22 A No.

23 Q Okay. So, when is the last time you saw him?

24 A During carnival.

25 Q Carnival; okay. And I know on the walk you

1       said you saw him at carnival and --

2       A       Yeah, he was holding a baby. He was holding  
3       Courtney's baby.

4       Q       Courtney's baby?

5       A       And Courtney's son was there, too. It was a  
6       girl and a boy. Courtney's son Jacari was there.

7               Because I know of Jacari because he used to  
8       come over to Quida's house all the time.

9               So, Jacari was there, and I guess he had  
10      a little crush on me whatever.

11      Q       Mm-hmm.

12      A       Yeah. He was there. And then he had like  
13      his cousins, his two cousins with him.

14      Q       Okay.

15      A       I don't know them, though. But his two  
16      cousins. I forget her name. She told me her name,  
17      but I forgot her name.

18              And then I seen, like when I turned my head,  
19      me and J [REDACTED] seen Maurice, and he was holding a baby  
20      and he was with other black random people.

21      Q       Mm-hmm.

22      A       He was with two girls and a boy.

23      Q       Okay.

24      A       But it wasn't Courtney.

25      Q       Okay. Two girls and a boy?

1       A       Yeah.

2       Q       Could you tell how old the girls were?

3       A       They was older. They was older.

4       Q       Okay.

5       A       They was like old, old.

6       Q       Like adults?

7       A       Yeah.

8       Q       Okay. And did he say anything to you?

9       A       Yeah. He said hi.

10      Q       He said hi?

11      A       But I didn't, you know, really say nothing.

12      I just turned my head.

13      Q       Okay.

14      A       Like I didn't really seen it, and he just

15      walked by and then like, I don't know, that's it.

16      That's all like happened.

17             But I forgot when carnival was.

18      Q       Oh, that's okay.

19      A       It was before September.

20      Q       Yeah. Okay. Okay.

21             Did you show any other adults the text

22      messages or anything? Did you show anyone what

23      he was texting?

24      A       No, I only showed -- the only person I showed

25      was Keyonne.

1 Q Mm-hmm.

2 A It was only me, it was only Keyonne, J [REDACTED]  
3 and [REDACTED] That was it.

4 Q Okay. What did Keyonne say about it?

5 A Keyonne was like, "Why is he texting you  
6 stuff like this," and I'd say, "Oh, yeah, but  
7 remember when you told me oh he's only just  
8 kidding?"

9 Q Right.

10 A And he's texting everybody stuff like that.  
11 And J [REDACTED] showed Keyonne the text messages on her  
12 phone and [REDACTED] so we all showed Keyonne the text  
13 messages.

14 Q Mm-hmm.

15 A And then he kind of like, he believed it.

16 Q Okay.

17 A The simple fact that, you know, Maurice was  
18 like that, because he didn't really believe it,  
19 like you know, he didn't want to believe it --

20 Q Yeah.

21 A -- or whatever, so I mean, I guess, he  
22 started to believe when he seen the text messages  
23 that Maurice will, you know, text.

24 But he won't like never say nothing on it.

25 But he will just see.

1 Q Yeah, yeah. Okay.

2 And do you know anyone else that Maurice  
3 has kind of done something to?

4 A No. Not that I know of.

5 Q Okay. Okay.

6 I know you were there when J [REDACTED] had something  
7 happen, so you know about J [REDACTED], but any -- yeah,  
8 other girls or boys in the family, or even outside  
9 the family that you heard?

10 A No. I don't really know of. Oh, yeah, but  
11 [REDACTED] got touched one time by Maurice, too.

12 Q Okay.

13 A And she told me the story, because when I  
14 was at her -- because she lives in Rhode Island,  
15 but I was at her house.

16 Q Mm-hmm.

17 A I spent a night over her house.

18 Q Mm-hmm.

19 A And she was telling me the story about how  
20 like she was like laying down and like she  
21 remembered her having clothes, on but when she  
22 woke up, she didn't have no clothes on.

23 So, she's like you know, it couldn't have  
24 been her siblings because everybody was sleeping  
25 except for him.

1           Like he's like, he waits till everybody  
2 goes to sleep to do certain stuff to, you know,  
3 yeah.

4       Q       Yeah. Okay.

5       A       So, I guess she said that he touched her,  
6 in her, you know, her area or whatever --

7       Q       Mm-hmm.

8       A       -- or something like that. And like I don't  
9 know, he said, she said that he tried to like stick  
10 his thing into her when she was sleeping or  
11 whatever.

12      Q       Okay. Mm-hmm.

13      A       And she woke up like and he'll just leave  
14 the room --

15      Q       Mm-hmm.

16      A       -- or whatever, but -- and then like she  
17 woke up and she was naked, so she knew it would  
18 have to be him --

19      Q       Mm-hmm.

20      A       -- because she knows how he is, too.

21      Q       Mm-hmm.

22      A       Yeah.

23      Q       Did [REDACTED] say where she was when that  
24 happened?

25      A       Her room.

1 Q In Rhode Island?

2 A Yeah.

3 Q I see. Okay. And did it --

4 A Wait, wait. I don't think it was in Rhode  
5 Island. Hold on. I think it was before, because  
6 she told me -- I think it was before because I  
7 don't think he ever came over.

8 Hold on, I think it was before. No, it was  
9 before. She lived on Tremont Street --

10 Q Oh, okay.

11 A -- and that's when it happened.

12 Q Okay.

13 A It was before she moved to Rhode Island.

14 Q And I'm sorry if I should know this.

15 Who does [REDACTED] live with?

16 A Her mom.

17 Q Who is?

18 A Kanika.

19 Q Kanika.

20 A Her name is Kanika.

21 Q Kanika. [REDACTED] mom is Kanika.

22 A And she lives with her mom, her mom's  
23 boyfriend.

24 Q Okay.

25 A His name is Kev.

1 Q Okay.

2 A She lives with her brother, Kari.

3 Q Kari.

4 A Her sister, Kanisa.

5 Q Kanisa. Okay.

6 A Her sister, Ariana, and her sister, Elise.

7 Q What's the last sister's name?

8 A Elise.

9 Q Elise.

10 A Yeah.

11 Q Did you say they live now in Rhode Island.

12 A Yeah.

13 Q Okay. What's [REDACTED] last name?

14 A [REDACTED]

15 Q [REDACTED] Okay. Got it.

16 A I knew it was the last name.

17 Q You do. You have a great memory.

18 You do, you remember names and --

19 A Well, because this is like -- it's like --

20 because they got like -- [REDACTED] and her family,

21 they got different last names.

22 Q Yeah.

23 A Like Kiara and Kanika got [REDACTED]

24 Q Kendall.

25 A Yeah. Kari has [REDACTED] Ariana has [REDACTED]



1 Elise has [REDACTED] and Kanisha has [REDACTED]

2 Q Got it. That is -- you keep them straight.

3 A Yeah, I know I -- I mean like, because the

4 reason I know, I just know my family last names,

5 but these, they don't have all the same last name

6 either, --

7 Q Yeah. Yeah.

8 A -- but, you know, they're still family.

9 Q Of course. Of course.

10 A Oh, Quida's last name is Bullock.

11 Q What is it?

12 A Bullock. B-U-L-L-O-C-K.

13 Q Okay.

14 A Tavaris' last name is Bullock, too.

15 Q Okay.

16 A But a "B" right there.

17 Q "B."

18 A Emoni's is Woodbury. Yes, it's different,

19 a different name.

20 Q Woodbury. Okay.

21 A Josiah's is Britt.

22 Q Brit?

23 A Yeah.

24 Q B-R-I-T-T.

25 A Yeah.

1 Q Okay.

2 A Darius is Bullock.

3 Q Okay.

4 A Keyonne's is Wilson.

5 Q Okay.

6 A And Taymoni's is Bullock.

7 Q Okay. Thank you for going through that  
8 with me.

9 A Okay.

10 Q I'm getting close to being finished asking  
11 you questions.

12 A Okay.

13 Q Thank you for being so patient with all  
14 these.

15 What about Quida now. Do you know if she's  
16 still cool with Maurice now or what it is?

17 A I don't know. No, she doesn't really like  
18 -- she doesn't like Maurice now.

19 She doesn't talk to him no more. She told  
20 me she doesn't talk to him no more.

21 Q Okay.

22 A Like no. And her sister don't either.  
23 Her sister's name is Nini.

24 Q Nini. Do you know how come they don't?

25 A Well, her real name is, I don't know how to

1 pronounce right, but it starts with a D-L.

2 I know it's like, I don't remember -- I know like  
3 what it is, but like I just can't --

4 Q That's okay.

5 A It's like -- it starts with -- I know it's  
6 -- what is it? It's Dinitrick (ph) or something  
7 like that, I just don't know.

8 Q Okay.

9 A I don't remember like how to say it --

10 Q Don't worry about it.

11 A -- but I just know -- yeah, and she didn't  
12 really have her kids around him either because  
13 she has kids names Tommy and Tashe.

14 Q Nini didn't have her girls around --

15 A No.

16 Q -- him or Quida?

17 A No. Nini didn't have her kids.

18 Q Okay. Nini didn't have her kids.

19 A Nini didn't have her kids, Tashe and TJ.

20 Q Okay.

21 A She didn't have her kids around him either  
22 because she knew like what was going on, so she  
23 doesn't want like Tashe to be in the mix of it.

24 Q Yeah. Okay.

25 A And she knows how TJ gets like, so like she

1 knows how he gets, so like he just -- he's like  
2 really crazy so like she didn't want to have him  
3 around.

4 Q And again sorry, oh, these are Quida's kids.

5 A Yeah. Nini has two kids named Tashe and  
6 Tommy.

7 Q Nini has two kids?

8 A Yeah.

9 Q Do you have any idea of any of these kids  
10 had anything happen with Maurice?

11 A I don't know.

12 Q Don't know. Okay. Okay.

13 And I'm sorry if you already told me this.

14 Do you know why Quida doesn't talk to  
15 Maurice?

16 A No.

17 Q Okay.

18 A She just told me that she doesn't no more  
19 and I was just like okay.

20 Q Okay. Okay.

21 How about any one else in your family that  
22 still talks to him? Anyone else?

23 A No. Because like, I don't know anyone else  
24 but I know someone seen him from our family named  
25 Jaylin.

1           Because Nini has four kids, I mean, because  
2           she has Ban, Jaylin, she has Tashe and she has TJ.

3           Q       Okay.

4           A       And Jaylin said he was walking down the  
5           street on Barry Street, --

6           Q       Okay.

7           A       -- and he's like -- when he hit the corner,  
8           he seen Maurice walking up the street. So, like  
9           yeah.

10          Q       Okay.

11          A       And he was going to -- like Jaylin, he got  
12          problems, too, like his problems is crazy. So, he  
13          was about to, you know beat him up or whatever --

14          Q       Yeah.

15          A       -- and I was like, I asked him why and he  
16          said because he likes touching little kids.

17          Q       Mm-hmm.

18          A       And I said yeah, that's not cool.

19          Q       Yeah. And that's Jaylin, said that?

20          A       Yeah. He doesn't like Maurice either.

21          Q       Okay. Okay. And what's -- do you know  
22          Jaylin's last name?

23          A       I forgot it. It's Jaylin -- because I know,  
24          she because like Nini, she has different --

25          Q       I was going to say, did I ask you what

1 Nini's last name is? Do you know her --

2 A Greathouse. That's Jaylin's last name,

3 Greathouse.

4 Q Greathouse, like great?

5 A Yeah. Greathouse.

6 Q Greathouse. Okay.

7 A And Jaylin's last name is the same thing.

8 Q Got it. Okay.

9 How old's Jaylin about? Just about?

10 A Twenty something.

11 Q Okay. Hi. The team must --

12 Do you remember the last time we talked,

13 I don't know if you remember, I said, oh, let

14 me check in with the team and see if I forgot

15 anything --

16 A Yeah.

17 Q -- and see if there's questions. Maybe they

18 thought of some stuff as we were just talking?

19 A Mm-hmm.

20 Q So, let me just pop over there and see what

21 they want me to wrap up with you about.

22 A Okay.

23 Q Can you -- well, when I'm over there, just

24 think for a minute if there is anything else that

25 happened --

1 A Okay.

2 Q -- with Maurice or texting you anything or  
3 anything he did.

4 A Okay.

5 Q Okay. All right. I shall be right back.

6 (Pause)

7

8 BY MS. SICONOLFI:

9 Q Okay. Just a couple things and then we'll  
10 be all done; okay?

11 A Okay.

12 Q Okay. And again, I want to thank you so  
13 much for being here with me?

14 A Yeah. I'm feeling very tired.

15 Q Okay. So, let's finish up and then we'll  
16 talk about like food because I don't want you to  
17 sit here being starving?

18 A It's okay.

19 Q Sorry. I know. You haven't had anything to  
20 eat or done anything yet today?

21 Are you related to [REDACTED]

22 A Yeah.

23 Q I should know that. How are you?

24 A [REDACTED] my cousin.

25 Q She's your cousin?

1 A Yeah.

2 Q Who's [REDACTED] mom?

3 A Kanika.

4 Q You probably told me that.

5 A I did.

6 Q Sorry. I'm trying to keep names straight  
7 and why didn't I write down Kanika?

8 A I swear you did, you wrote down.

9 Kev, Kanika, [REDACTED] family --

10 Q I know, yes I did. Yes, I did. Here it is,  
11 here it is, oh okay.

12 She's your cousin. Who's sister is Kanika?

13 A My mom's.

14 Q Okay.

15 A They're close.

16 Q They are?

17 A Yeah.

18 Q Okay. Okay. And then, you know what, you  
19 kind of brought up King a little bit and I had  
20 brought out how we had talked King before?

21 A Mm-hmm.

22 Q We don't have to talk about what happened  
23 with King.

24 But do you know -- I want to talk about  
25 if this -- if like what was happening with King



1       was ever happening at the same time as Maurice,  
2       like the ages you were?

3       A       No, it was different. Well, let me think  
4       because was I -- no, it was different, because  
5       I was fifteen now when I was living with Quida,  
6       and I was sixteen when I was living -- and this  
7       is now, well it was like way back like months ago.

8       Q       So, --

9       A       It wasn't the same age.

10      Q       Let me ask you this.

11             I think you said when this was going on  
12      with Maurice, --

13      A       Yeah.

14      Q       -- that you were in eight grade?

15      A       Yeah.

16      Q       So, --

17      A       I met Maurice first.

18      Q       You met Maurice first?

19      A       I knew Maurice first.

20      Q       Okay. And that was in the eighth grade?

21      A       Eighth grade, yeah, and then I met King when  
22      I was in ninth grade, when I was in high school.

23      Q       Okay. Okay. So, Maurice first in eight grade  
24      and that's when you were living with Quida?

25      A       Yeah.

1 Q Okay. King's later. Ninth grade, high  
2 school.

3 A Mm-hmm.

4 Q Do you know if they know each other at all?

5 A I don't know that.

6 Q Ever seen them talking or in the same place  
7 or anything?

8 A Well, they was talking one time, but I don't  
9 know if they know each other. They was talking  
10 in Shamia's house when Shamia was living on Morris  
11 Street.

12 Q Okay.

13 A When he came over, because he came with my  
14 cousin, Kanisha.

15 Q Okay.

16 A He came over with her, and he was in the  
17 kitchen with Maurice and they was having a  
18 conversation.

19 Q Oh, okay.

20 A So, I don't know if they know each other or  
21 whatever, but I just know --

22 Q You've seen them talking?

23 A Yeah.

24 Q Okay. And I know you told me that what  
25 happened with Maurice when he touched you was

1 all in Quida's house; right?

2 A Yeah.

3 Q Did King ever do anything in Quida's house?

4 Was King over there?

5 A No, King don't know Quida.

6 Q Okay.

7 A Well, they actually do know each other.

8 Q Okay.

9 A But it's just that Quida doesn't like King  
10 so King never came over to Quida's house.

11 Q Got you.

12 A And I didn't meet King until after I moved.

13 Q Oh, until after, anyway.

14 A Yeah.

15 Q Okay. Okay. Thank you for thinking about  
16 that with me.

17 The only other thing is, if there's any  
18 other last names that may be we didn't get, but  
19 you gave me so many last names, let me see.

20 A Oh, J [REDACTED]'s. I didn't give you J [REDACTED]'s.

21 Q Give me J [REDACTED]'s. Let's write it down.

22 A [REDACTED] I gave you [REDACTED]

23 Q [REDACTED] you gave me.

24 A It's [REDACTED] Her last name is [REDACTED]

25 Q Yeah. Do you know if it's [REDACTED] or [REDACTED]?

1 A [REDACTED].

2 Q It's [REDACTED]. I knew I wrote that down  
3 somewhere. [REDACTED] Okay.

4 Do you talk to [REDACTED]

5 A Yeah.

6 Q Yeah.

7 A All the time.

8 Q Good. Okay. I'm just thinking, let's see  
9 because I don't want to forget anything, just see  
10 if there's anything else I need to ask.

11 I think the last thing I just want to make  
12 sure is, Maurice, did he ever say anything to you  
13 about telling?

14 A No.

15 Q Okay. Okay.

16 A He just told me not to tell nobody.

17 Q Oh, he did.

18 A Yeah. But he just never threatened me to  
19 say don't --

20 Q Okay.

21 A -- you better not tell nobody, yeah.

22 He just told -- he'll tell me and [REDACTED] --  
23 he told us not to say anything, but you know,  
24 we tell each other since we're close.

25 Q Mm-hmm.

1 A We all tell each other.

2 Q Mm-hmm.

3 A We're all family, so it's like we tell each  
4 other what's happening.

5 When we don't tell Quida.

6 Q When he said don't tell anyone, did he say  
7 anything like what would happen if you told?

8 A No. He just said don't tell nobody.

9 Q Would he say that on the text messages?

10 A Text message.

11 Q Okay.

12 A He'll be like, he'll say mostly everything  
13 on the text messages, because Quida will be around,  
14 so like he won't be in a room with us, he'll be  
15 like in a room with her, or like he'll be in the  
16 kitchen.

17 Q Yeah. Okay.

18 A He'll text me, tell me like, "Tell [REDACTED]  
19 don't say nothing," or like, "Tell J [REDACTED] don't say  
20 nothing."

21 Q Got you. Okay.

22 And has he ever like taken a picture of you  
23 or anything, that you know of?

24 A No.

25 Q Okay. I think I'm all done. All right.

1           Thank you so much and I'm going to turn  
2           this off. There we go.

3           It says 1:06, I wonder, yeah I guess we're  
4           talking about an hour and six minutes. So, you  
5           put up with me for sixty-six minutes. Thank you.

6           That's a while to put up with me first thing  
7           in the morning.

8           Okay. So, when we get that turned off, we'll  
9           just chat for a minute and get you right back home.

10          A       Mm-hmm.

11          Q       Okay. So, this is -- school today was only  
12          because of just --

13          A       Yeah.

14          Q       -- you know, sleeping.

15          A       I go to school like everyday.

16          Q       Yeah, I know, because when we were there,  
17          we said, oh she missed other days, and I think it  
18          was your principal said she's doing great. She's  
19          here everyday.

20          A       Yeah. I've been everyday.

21          Q       That's so good. That's so great. It's hard  
22          to get to school sometimes. It is. At least you  
23          only have, maybe like two more years.

24          A       Yeah, kind of.

25          Q       You can do it. I know the kids won't make

1       it easy. I know.

2               So, the MBTA, you take the MBTA to Dudley.

3       A       I take the 45 to Dudley, but then sometimes  
4       I switch the buses, but I need to take 28, the 23  
5       or 45 sometimes.

6       Q       Okay.

7       A       Because that all takes me, to like to the  
8       door to like --

9               MS. SICONOLFI: You guys can turn the light  
10       on now. We're off?

11              FEMALE VOICE: No, we're not.

12       Q       Oh, okay. Okay. They're still recording.  
13       They're trying to turn it off I guess.

14              Is there anything at school that's like  
15       activities you like? I know that sounds lame,  
16       but --

17       A       Well, we have activity blogging, like I have  
18       like step aerobics.

19       Q       Really?

20       A       Yeah. We do like, we put like song, and we  
21       put like a dance together.

22       Q       Yeah.

23       A       Yeah. I have that. There's like there's  
24       cooking in the kitchen. There's video things --

25       Q       Oh, wow.

1       A       There's walking club, there's yoga.

2       Q       Really?

3       A       Yeah. There's board games and stuff like  
4       that. It's like different types of things.

5               We only have it on Thursdays?

6       Q       I was going to say when is that?

7       A       On Thursdays.

8       Q       What time?

9       A       Like 10:00.

10      Q       Okay. Do you get --

11              (Interview Concluded)

12

13

14

15

16

17

18

19

20

21

22

23

24

25



C E R T I F I C A T E

I, Susan M. Lobie, Certified Electronic Transcriptionist and Notary Public for the Commonwealth of Massachusetts, and a Court Approved Transcriptionist for Office Solutions Plus, do hereby certify that the foregoing is a true and accurate transcript prepared to the best of my ability, from audio recordings of the Interview of Ms. D [REDACTED] [REDACTED] in the matter of Commonwealth v. Eden Jacques, Docket No. 1684CR00862 with Assistant District Attorney Kyle Siconolfi.

I, Susan M. Lobie, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Susan M. Lobie, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

Proceedings recorded by electronic sound recording equipment. Transcript produced from computer.

 Date: November 15, 2019

Susan M. Lobie, President  
Office Solutions Plus  
15 Marion Road  
Salem, MA 01970  
(617) 471-3510  
SueLobie@osptranscriptionservices.com

Notary Public, Commonwealth of Massachusetts  
My Commission Expires March 26, 2021

Volume: VI  
Pages: 189  
Exhibits:  
ID: H-I

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

\* \* \* \* \*  
COMMONWEALTH OF MASSACHUSETTS  
v.  
EDEN JACQUES  
\* \* \* \* \*

Docket No. 1684CR00862  
1784CR00800

JURY TRIAL  
(DAY 6)

BEFORE THE HONORABLE ROBERT L. ULLMANN

APPEARANCES:

For the Commonwealth:  
Suffolk County District Attorney's Office  
1 Bullfinch Place  
Boston, Massachusetts 02114  
By: Kyle E. Siconolfi, Assistant District Attorney

For the Defendant Jacques:  
Swomley & Tennen, LLP  
50 Congress Street, Suite 600  
Boston, Massachusetts 02109  
By: Eric Brian Tennen, Esquire

Suffolk Superior Courthouse  
Boston, Massachusetts  
Courtroom 806  
November 21, 2019

NANCY McCANN, CVR-C.M.  
TRANSCRIBER

I N D E X

	<u>PAGE</u>
CLOSING ARGUMENT BY MR. TENNEN	31
CLOSING ARGUMENT BY MS. SICONOLFI	48
JURY CHARGE	68

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
H	Written copy of Jury Instructions	107
I	Communication from Jury	107

1 closing arguments are not evidence.

2 I've given each attorney roughly 35 minutes to  
3 argue, just to give you a sense of the timing on things,  
4 and we'll take a recess after that.

5 Mr. Tennen.

6 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT BY:

7 MR. TENNEN: Just because a kid says something  
8 happens doesn't mean it happened. You all know that.  
9 We asked you questions about that when we selected you  
10 as jurors and you all agreed you needed to hear more,  
11 you need context when considering allegations, any  
12 allegation, regardless of who's making it. That's how  
13 I started this trial. That sounds familiar. And  
14 I suggested you wouldn't hear corroboration about these  
15 allegations. You would get context, context to explain  
16 how and why these allegations are not true, and you have  
17 that, you have that context. You have inconsistencies,  
18 you have clearly distorted memories, you have bias, you  
19 have presumptions, you have a failure to investigate  
20 counter theories, you have recantations or  
21 contradictions. You know, there's a lot of ways to  
22 define reasonable doubt, but I just gave you a pretty  
23 good list of what it means.

24 I appreciate, I know we all appreciate that you  
25 came into this trial with an open mind, and it's clear

1       you paid attention, and more importantly, you're ready to  
2       judge this case, not on emotion, but on what you heard at  
3       this trial, and if you're true to that oath, and the only  
4       possible conclusion is that Mr. Jacques is not guilty of  
5       these offenses. We talk about those concepts, open  
6       minds, paying attention, not emotion, and how that plays  
7       into the evidence. So let's talk about an open mind.  
8       One of the reasons I told you in my opening why you have  
9       to have an open mind, it's not just about you don't  
10      decide guilt or innocence, it's you want to hear from all  
11      of the evidence before you judge a witness. Right? You  
12      might have one witness at this point, and until you hear  
13      something over here, you can't know what to say. Right?  
14      So you want to see what other people, what other  
15      witnesses see. Are these stories plausible? Are there  
16      other explanations? Did the investigation uncover things  
17      that either support or refute these allegations? I mean,  
18      in this case, you might ask, was there even an  
19      investigation or did they simply just document  
20      statements. You know, an investigation means you try  
21      and explore evidence, prove or disprove theories. This  
22      wasn't an investigation, this was just a recording  
23      studio to get as many statements without regard to  
24      inconsistencies, contradictions, or absurdity. But,  
25      I digress, you have to hear all the evidence to judge the

1 witnesses.

2           What I neglected to point out is that it's not  
3 just about what you hear, it's about what you don't hear  
4 that gives you context, also, right? Context is the  
5 presence or absence of evidence, and sometimes the  
6 absence tells you a lot. I'll give you an example.  
7 You're being asked to believe that Mr. Jacques videotaped  
8 himself touching S [REDACTED] or S [REDACTED]'s butt. What did you  
9 hear about that? You heard that D [REDACTED] saw that video.  
10 But what she saw is unclear because it's changed. She  
11 said she only saw him touch her with his hand, then she  
12 saw his penis, then she saw his face; then she didn't see  
13 his penis, then she didn't see his face. You heard that  
14 she said at least five people saw that video. But, you  
15 know, there are things you didn't hear. What did S [REDACTED]  
16 say about that? What did J [REDACTED], Shantia, Dimari or Ty say  
17 about that? Do the police know what Ty said about that?  
18 No, they never asked him. Do they know what other says?  
19 We know that the police had information, that they spoke  
20 to Dimari, and he said he didn't see it. So how did  
21 D [REDACTED] respond to that when the police followed up to  
22 ask her about that inconsistency? Right, they never  
23 followed up to ask her about that. So that absence of  
24 evidence is context.

25           We also asked you to pay attention. Let's talk

1 about paying attention. Back to the phone. What else  
2 did you hear about phones or videos? You heard that  
3 Mr. Jacques used to let D [REDACTED] and her siblings use his  
4 phone to record videos. There was some evidence about  
5 this Triller app, you pick a song and then you take a  
6 video of yourself dancing, sort of like lip-syncing for  
7 dancing. That was a little fact that maybe you missed if  
8 you didn't pay too much attention because there were  
9 bigger facts in this case, I get it, but if you paid  
10 attention, you pick up on even these little facts, and  
11 that matters, because now we get to don't decide this  
12 case on emotion. And it's not just me asking you this,  
13 the Judge is going to instruct you on how emotion does  
14 not play a role in this. And I'm not saying you  
15 shouldn't have emotion, of course you have emotion, I'm  
16 just saying you don't use that to decide this case. This  
17 is a very serious difficult case, so I'm not saying that  
18 no one should feel things, but when you get back there  
19 and you're making a decision, is it because it's coming  
20 from here or from here? Emotion, deciding this case on  
21 emotion, for example, would be you hear about this video,  
22 you say, oh, that really makes me sad, it must be true.  
23 That's deciding the case on emotion. Not deciding it on  
24 emotion, you hear about this video, you have that absence  
25 of evidence, you hear about these videos that they used

1 to record on his phone, and you say maybe there's more to  
2 this. And then you remember about this context, about  
3 D [REDACTED], about how she felt about Mr. Jacques, about how  
4 he treated her, about what she knew about him. Right?  
5 She was warned he was sneaky, he was the guy who touched  
6 K [REDACTED]. And you think, well, maybe she doesn't see a  
7 video and just uses that as an excuse or maybe she sees  
8 one of these Triller videos and uses that as an excuse.  
9 A few days prior, she had told her mom that Mr. Jacques  
10 was rubbing her thighs, nothing comes of that. She told  
11 her brother, nothing comes of that. So she needs  
12 something else. You have the video. You put emotion  
13 aside and start to see the logic of some of these things.  
14 So just by doing your duty, not prejudging, paying  
15 attention, not deciding on emotion, you can already see  
16 that this story about the video is simply not true.

17 Now, the other thing I told you in my opening is  
18 that you were going to hear essentially about two trials,  
19 the trial about K [REDACTED] and then the trial about  
20 everything else, and I told you the context for each one  
21 is different, so let's go to the beginning of those and  
22 explore that. Let's start with K [REDACTED]. You know it's  
23 possible that young children can make false allegations.  
24 You heard it from the expert. She knows it's true even  
25 though she might have been reluctant to admit it with me.



1 I mean, she really wanted you to know that kids can be  
2 resistant to suggestiveness. They've done studies,  
3 they've done studies, but we know that when it comes to  
4 allegations of child abuse, that's where kids are not  
5 resistant to suggestiveness. We know kids make false  
6 allegations of child abuse because that's one of the  
7 things the studies have found. Sure, there are studies  
8 that say they don't make false allegations of rectal  
9 enemas or whatever it was she was talking about,  
10 conceded, but they make false allegations of sexual  
11 abuse. Now, it's not something that happens on purpose.  
12 You think K█████'s family wants her to believe this  
13 happened? Of course not. It doesn't happen on purpose.  
14 But it happens, and it happens when people aren't  
15 guarding for it. It happens when you don't take a step  
16 back and ask yourself whether something doesn't sound a  
17 little off. It happens when the police are just a  
18 recording studio instead of investigators.

19 So K█████ is walking home with her mom and  
20 Mr. Jacques, she's on his shoulders, I think is how she  
21 described it, not the kind of thing a kid typically does  
22 if they're afraid of someone, and they separate from mom  
23 on that staircase, you have a picture in there, what,  
24 30 seconds, a shortcut where they go up the stairs and  
25 mom goes around the corner and they meet up. And after

1 that 30 seconds -- a minute, let's call it a minute,  
2 30 seconds to a minute, she tells her mom that he touched  
3 her on her crotch, something along those lines. Now,  
4 first of all, if he was intending to touch her  
5 inappropriately, it doesn't really seem like the way it  
6 would happen, to take advantage of some 30 second detour,  
7 or is it that if you're carrying a child on your  
8 shoulders, just sort of holding them up with your hands,  
9 it's possible to touch them over there clothes  
10 incidentally to that, and even then, K [REDACTED] says this to  
11 her mom in front of him. Not really afraid of him and  
12 she tells her mom in front of him. Now, later, you hear  
13 that she says a bunch of stuff happened before that and  
14 she said nothing. So would someone who was afraid of him  
15 tell on him to her mom right in front of him?

16 That leads to the police getting involved, and  
17 you have an EMT who responded to that call about that,  
18 and he talks about her as being calm, not anxious, not  
19 tearful, no problem communicating. And she basically  
20 tells him the same thing, Mr. Jacques touched her on her  
21 crotch outside of her clothing, outside of her underwear,  
22 something like that. So what happens? This is where  
23 when you're not guarding for it, suggestiveness can  
24 happen. Dad hears about it and he freaks out,  
25 understandably so. Who wouldn't? But freaking out is a

1 problem because dad is talking to her about this and  
2 grandma is talking to her about this and her aunt is  
3 talking to her about this, and we don't know what they're  
4 asking or how they're asking it or how many times they're  
5 asking it other than we know they're asking it lots of  
6 times. And we go from putting a hand outside of her  
7 underwear to putting a stick, inserting a stick in her.  
8 That's a big jump and an odd one. One, by the way, that  
9 she doesn't say happened today. Put that away for the  
10 moment.

11 So she's talking to dad and grandma and aunt a  
12 lot about this. By the way, what family member wouldn't?  
13 But they don't know how to talk to kids properly about  
14 this. They could and probably put all sorts of ideas in  
15 her head and she's taking these cues. Right? If they're  
16 talking about it and asking questions and taking her to  
17 this hospital and that hospital and DCF is coming to talk  
18 about it, then she starts to think, well, something bad  
19 must have happened, and the story grows, and by the time  
20 she's interviewed in 2016, the first time anything is  
21 recorded, we have no idea how many times she's spoken  
22 about it, let's ask her what she said. But her story has  
23 grown, and it's grown into things that could not have  
24 happened. Mom seeing the two of them in the basement?  
25 The stick in the crotch seems kind of absurd or crazy, so

1 much so that she didn't even say that in 2016, she had  
2 moved on beyond that one. It's not clear what is a  
3 memory, what is a response to a cue, what is just a  
4 robotic statement that she now makes after saying it so  
5 many times.

6 She doesn't remember a lot, but she forgets some  
7 things you wouldn't expect someone to forget. So forget  
8 about these allegations. She doesn't remember, for  
9 example, the name of her school when she was in Boston.  
10 That one, I get, that seems like the kind of thing a kid  
11 might not remember. Sure, makes sense. She doesn't  
12 remember riding in an ambulance. That one, not many  
13 people have been in an ambulance by the age of six, it's  
14 not the kind of thing a kid is going to forget, having  
15 ridden in an ambulance, in the back of an ambulance.  
16 I still remember going to the fire station when I was on  
17 my second grade field trip. Not only does she deny that  
18 he stuck a stick in her, she denies even saying it. She  
19 doesn't even remember saying that, even though she said  
20 it many times. Again, not the kind of thing you would  
21 forget if it happens. Just a week or two ago, she told  
22 Detective Morrissey that Mr. Jacques threatened, she  
23 heard Mr. Jacques threatened to stab her mom, and this  
24 past Monday, she said that never happened, she doesn't  
25 remember even saying that. Maybe it happened, maybe it

1 didn't, but even an 11-year-old can remember something  
2 they said a week or two ago.

3 Kids can have memories put in their heads easily  
4 so that if they want to believe something, they can. If  
5 adults are telling them something bad happened, they  
6 think it did. Think back to when you were a kid. Aren't  
7 there a bunch of things that you remembered a certain way  
8 that when you got older, you realized it was wrong, good  
9 or bad, right? You talked to your mom and she corrects  
10 you and says, well, that's not how that happened, you  
11 remember that incorrectly, you weren't riding a bike  
12 before you could walk, you didn't fall out of your  
13 bedroom window, you tripped on the porch. Kids have  
14 these memories of things that make them grandiose.

15 I was not an athletic kid, but I played Pop  
16 Warner football and I was offensive line, and I loved to  
17 hear the announcer say, oh, running back runs for five  
18 yards, or whatever it is, but I never called offensive  
19 line because, you know, we don't do things.

20 THE COURT: I'd keep the personal references  
21 out.

22 MR. TENNEN: Kids' memories are influenced by  
23 biases they have, by things that they think happened, by  
24 ideas that are put in their head. Think about how she  
25 knows to respond to questions. You kind of saw

1 suggestive interviewing in this courtroom by everyone who  
2 was asking her questions. Well, where was he when that  
3 happened? I don't know. Well, was he standing or  
4 seated? Oh, that's what they're asking for, standing.  
5 Where was his body? I don't know. Well, was it in front  
6 or behind? Oh, that's what they're asking for, in front.  
7 She agreed to things that I asked, then agreed to the  
8 opposite when the District Attorney asked her. And an  
9 easy question that all kids know how to answer, how did  
10 that make you feel? Well, it may be feel bad, sad. Why?  
11 I don't know. That's a cue question, kids get that all  
12 the time. Kids know cue questions. If you have kids or  
13 you know kids, the ultimate cue question is when, you  
14 know, two kids are fighting and you say, is there  
15 something you want to say? They know that's the cue to  
16 say, oh, I'm sorry. What are you sorry for? I don't  
17 know. Kids know cue questions.

18 The Commonwealth might say that she's confused  
19 or some of her statements are different because she's  
20 scared, but honestly, she didn't seem scared at all. She  
21 seemed a little robotic, as if she had practiced this or  
22 said this many times over, and she just needed those  
23 cues, she just needed what was there to say, she just  
24 needed that cue. She accused him in front of his mom,  
25 she was not scared. And now you see how these things go.

1 A false allegation by K [REDACTED] leads to him being the guy  
2 who touched K [REDACTED], and that's how they see him and  
3 that's how D [REDACTED] first learned about Mr. Jacques.

4 Let's talk about D [REDACTED]. We know she heard  
5 things about him. Aunt Shamia says he sneaky. Odd  
6 thing to say without context, but she had context because  
7 K [REDACTED] told her. D [REDACTED] said that in her SAIN  
8 interview. She gave a whole story about how K [REDACTED] told  
9 her about this guy named King who had touched her before  
10 D [REDACTED] even knew who he was. Except on the stand, she  
11 said she never said that. It can't be both. Either she  
12 said it or not, either it happened or it didn't. Meaning  
13 when she said it, either that was true and she couldn't  
14 remember it now, or when she said it, it wasn't true.  
15 Not great options. It would stand to reason that that  
16 was told to her, that's why she had such a story about it  
17 in 2016, that she knew he was sneaky, that that was the  
18 guy who had touched K [REDACTED].

19 Years later, she doesn't remember what's up or  
20 down. Maybe she really doesn't remember that. That's  
21 the kind of thing that just seeped in her head, that's  
22 the bias that just seeped in her head about Mr. Jacques.  
23 And so she didn't like him. First thing, he's the guy  
24 who touched K [REDACTED]. Next thing, he's not her dad. He  
25 comes into a home where she's fine with her family, he's

1 not nice to her siblings, and that's an understatement.  
2 You heard all the ways in which he didn't like the way he  
3 treated her siblings, all of them, S█████, Shalaya,  
4 Dimari. And what is it that Dr. Block said, that  
5 sometimes the lies are intentional, like when a teenager  
6 is mad at an adult and wants to get them out of the  
7 house, when they resent them. D█████ fits almost every  
8 profile Dr. Block described about when teenagers  
9 intentionally lie about things. Was she afraid of him?  
10 She's the girl who stood up to him when he punished her  
11 siblings. She says she froze up when he did these  
12 things, but in 2016, she explained all the times that she  
13 stood up to him, that she said no, that she slapped him,  
14 that she kicked him. Again, I understand not remembering  
15 everything, getting some details wrong, but either you  
16 stood up to him or you didn't, and she stood up to him.  
17 She wants him out of the house.

18 She floats the rubbing of the thighs to mom and  
19 Dimari, they don't bite, so she goes bigger with the  
20 video. Then two weeks later when she gives her SAIN  
21 interview, she talks about all the ways in which almost,  
22 almost he did these things, but he couldn't accomplish  
23 them because she stopped him because she stood up to him.  
24 She says he almost touched the inside of her butt, but  
25 did not. Then shortly after that, she writes down what



1 happened, right? She's told to write down what happened.  
2 And she writes in that that, oh, no, he definitely put  
3 his penis in my butt. That's what she writes. By the  
4 way, she says she also wrote down something for S [REDACTED],  
5 but we don't have that, that's never been seen.

6 Now, again, I understand the idea that some kids  
7 who have really been abused may not give all details at  
8 once. I get that. They may confuse things, like dates,  
9 where things happened. They may not talk about  
10 everything that happens at one time, but I guarantee you,  
11 a 15-year-old teenager knows the difference between  
12 having a penis inserted in her butt and having a penis  
13 inserted in her vagina, and I'm sorry I have to talk like  
14 this, but this is important, it's not something you  
15 confuse. But she did, somehow, even though she took the  
16 time to write it down, two years later, she says she  
17 meant vagina, not butt. That is one contradiction too  
18 far.

19 Dr. Block talked about sometimes there is  
20 hyperfocus with trauma, that in a traumatic event, you're  
21 so focused on something, that's all you can think about.  
22 If he were penetrating her vagina or anus, you would  
23 think she would be hyper focused on that and would not  
24 get confused about that. Maybe other stuff, not that.  
25 And then she testifies, and it's like sometimes she

1 forgot what she was supposed to say, so even she got some  
2 of those same cues. Did anything else happen in Shamia's  
3 room? No. Another room? No. Well, what about the  
4 mattress where you slept? Oh, yeah, oh, yeah. Anything  
5 else happen? No. Well, did he use his hand in any other  
6 way? Oh, yeah. Anything else? No. Did he use any  
7 other body parts? Oh, yeah. And so on.

8 I asked her, when she spoke to her mom, to  
9 Dimari, to the nurse, to the police, did she feel safe.  
10 Yes. Did she feel comfortable? Yes. Did she have any  
11 problem communicating? No. But she didn't tell them  
12 more. And then right on cue, the Commonwealth came back  
13 and said, well, why didn't you tell them? She says,  
14 because I was scared. But two seconds ago, you just said  
15 you were not scared. You were comfortable. She knows  
16 the cues.

17 You've seen this, it can be easy to manipulate  
18 kids, no matter what the age. I asked leading questions,  
19 I'm allowed to do that. But sometimes, it wasn't clear  
20 if they were agreeing with me because it was true and  
21 that was their memory or they just wanted to agree with  
22 an adult who was asking questions. Same with the  
23 Commonwealth, it is easy sometimes to get kids to say  
24 things.

25 So how do you try and make sense of these

1 inconsistencies? Well, let's start with maybe if there  
2 had been more of an investigation. They don't want to  
3 know. Inconsistencies, they just chalk it up to fear or  
4 trauma. They don't leave open the possibility that it  
5 did not happen, they don't investigate that. You don't  
6 hear, you don't want to hear -- sorry. You want to hear  
7 context when you have allegations like this. You don't  
8 prejudge, right? That's what you're not supposed to do,  
9 but the police do. If you have witnesses who say  
10 contradictory things, you follow up. If they say things  
11 that don't make sense, you follow up. If D [REDACTED] says  
12 people saw that video, you follow up. If she says she  
13 told her mom, then says she didn't tell her mom, you  
14 follow up. If she says she spoke to K [REDACTED] about  
15 Mr. Jacques before she met him, you follow up with  
16 K [REDACTED]. You want to see if these elements are there. So  
17 you follow up and try and get to the bottom of it. If  
18 K [REDACTED] says he inserted a stick in her, something that's  
19 a little out there, and then she doesn't mention it  
20 again, you follow up. This is too important to just be a  
21 recording studio. You want context, you need context,  
22 and now you know. You have this misunderstanding that  
23 gets exaggerated by adults. He gets the reputation as  
24 the guy who touched K [REDACTED], and you have an angry  
25 teenager who takes advantage of that reputation.

1           One more thing I want to talk about is the  
2 phone. Yeah, he broke that phone. The Commonwealth  
3 wants you to believe he did it to cover up evidence, but  
4 it doesn't really make sense because if that was his aim,  
5 he could have done it at any point. He could have done  
6 it before he got arrested, he could have done it when  
7 he's got the phone in front of him for a 45 minute  
8 interview, 30 minutes, however long it was. Yet, who  
9 intends on destroying evidence they just gave consent for  
10 the police to look at? And he gave that consent. That's  
11 a pretty dangerous game if your plan is to pretend to  
12 give consent and have a long interview just to destroy  
13 the evidence at the end. Why go through that, why bother  
14 even giving that statement? Why bother sitting there and  
15 enduring that when you can just jump at it from go? He  
16 wanted them to see it. He got mad and frustrated at  
17 something. He wanted their help. The detective said,  
18 well, you know, that's not what they were talking about.  
19 There was some exchange about what they could do for bail  
20 or how these things get charged. The detective explained  
21 that's not how it works. Some weird exchange about,  
22 well, I gave you consent, why do you have to seize it,  
23 not even an exchange that necessarily makes sense, and so  
24 he got frustrated. And you know what he said when he  
25 broke it, right? If you won't help me, I won't help you.

1 Not the smartest thing to do to destroy something you  
2 think can help you, but he was mad at them for whatever  
3 reason, he didn't want to make their job any easier. And  
4 yeah, it sabotaged him, but in some weird way, he thought  
5 it sabotaged them, too. If he had said, well, now you'll  
6 never see these videos, or good luck convicting me, or  
7 something like that, then maybe. But this was nothing  
8 more than a temper tantrum that hurt him. It wasn't  
9 about covering up evidence, it was a tantrum.

10 Eden Jacques is not guilty of these crimes.  
11 He's not. The evidence is not there. Commonwealth has  
12 not come close to meeting their heavy burden, not close.  
13 Beyond a reasonable doubt? This case is dripping with  
14 reasonable doubt. No one who sat and listened to those  
15 witnesses can have any confidence that what they are  
16 saying happened is true. Mr. Jacques is not guilty.

17 THE COURT: Thank you, Mr. Tennen.

18 Ms. Siconolfi.

19 MS. SICONOLFI: Thank you, Your Honor.

20 CLOSING ARGUMENT ON BEHALF OF THE COMMONWEALTH:

21 MS. SICONOLFI: I want to start where he left  
22 off, proof beyond a reasonable doubt. The key word in  
23 that important phrase is reasonable, what is reasonable  
24 to believe, what is reasonable to doubt. Based on the  
25 evidence that's in front of you, you heard the words,

1 I don't like these memories, I try not to think about it.  
2 That's what D [REDACTED] said when she was before you in her  
3 quiet, to the point manner of speaking, the few words  
4 that speak so much about what these girls experience has  
5 been since the defendant sexually abused them.

6 K [REDACTED], too, she doesn't like to think about it.  
7 Her grandmother echoed that when she testified. They  
8 only talk about it when they have to, when it's clear  
9 that K [REDACTED] is struggling.

10 This tells you these girls didn't craft a lie or  
11 some elaborate fabrication to stick something to the  
12 defendant like the defense would have you believe. It  
13 shows you that thinking up different ways that he could  
14 violate their bodies is the furthest thing from their  
15 minds, because they have to live with that memory.

16 The theory that the memories for K [REDACTED] were  
17 falsely implanted in her brain by her family or by people  
18 that she spoke to or the product of suggestion over time,  
19 it does not bear out on the evidence that's in front of  
20 you.

21 Defense wants you to see it as a story,  
22 something that's changed or evolved over time,  
23 particularly when she went to live with her dad and her  
24 grandmother and things changed into sticks or hard things  
25 going into her body; that because of her family, her

1 memory became more than what it was, it became a lie.

2 But you know that's a false theory and you know  
3 that's not supported by the evidence because you heard it  
4 directly from K [REDACTED], herself. Do you remember? She sat  
5 there and she told you that the defendant's body was on  
6 top of her, she felt his penis in her vagina and he was  
7 moving up and down and white stuff came out and it came  
8 out on her leg and she needed to go wipe it off, and then  
9 she told her mother.

10 Before she went to dad's house, before she went  
11 to grandmother, K [REDACTED] told the truth, she told what the  
12 defendant did, and that flatly rebuts, that consistent  
13 statement flatly rebuts the theory that it's fabricated  
14 as a result of her being with her family and then talking  
15 about it from time to time.

16 It's consistent with what she told her family,  
17 it's consistent with what she told you on the stand.  
18 It's not a changing or evolving story, no matter the  
19 words that counsel tried to put in her mouth, because you  
20 didn't hear those statements in evidence, did you?

21 You didn't hear that there was touching of her  
22 vagina over her underpants and that there was a  
23 conversation between her and King and her mom and  
24 everything was okay. You didn't hear that, that's not in  
25 the evidence.

1           You heard K [REDACTED] tell her truth, and it hasn't  
2 changed, it hasn't evolved. The words have come out  
3 piece by piece.

4           The theory that K [REDACTED] and D [REDACTED] somehow  
5 conspired to frame this man with acts of rape, sexual  
6 abuse, because D [REDACTED] had problems with him in the  
7 household is plainly unreasonable, because you heard  
8 about what the problems were.

9           First of all, it started that D [REDACTED] liked  
10 King, she liked the defendant, she thought he was cool.  
11 And yeah, she told you over time, she started to like him  
12 less, because there were problems in the house, yelling  
13 about who takes out the trash, putting somebody in time  
14 out, arguing or punishing somebody for giving the dog a  
15 bone, and you are supposed to believe that she took those  
16 small disagreements and responded by saying that he bent  
17 her over a stool and put his penis in her butt crack?

18           Touched her back with it and pushed it into her  
19 vagina? That she saw a video of him rubbing on her  
20 sister's naked buttocks, her eight-year-old sister? Is  
21 that a reasonable thing to believe as a response? No.  
22 That's not a response to disagreements in the household,  
23 that's what happened and that's what she told you.

24           She told you he wasn't even rude to her, he took  
25 care of them, he made sure they had food to eat. There's



1 no reason from what she's told you or from her demeanor  
2 to believe she made it up.

3 Did she strike you as somebody who's capable of  
4 fabricating an elaborate lie? With buy-in, with co-  
5 conspiracy from family members she doesn't have regular  
6 contact with? Yes, she said her aunt told her he was  
7 sneaky, and what was that supposed to mean, does he steal  
8 money, does he go through your things, does he tell lies?

9 D [REDACTED] told you she remembers talking to K [REDACTED]  
10 at some point in the past few years, she had no memory of  
11 talking about King, and it's not reasonable to suggest  
12 that she did, that the two of them, that K [REDACTED] and  
13 D [REDACTED] had a conversation with each other about what  
14 King had done.

15 They hadn't seen each other in years, they don't  
16 share a house, they never have. K [REDACTED] is only allowed  
17 around her mother, who would have lived with D [REDACTED] for  
18 a period of time, is only allowed around her under  
19 supervision, and she's supposed to be with D [REDACTED]  
20 chatting her up about what this man did to her body?

21 These girls are seven years apart, both under  
22 16, and that's what they're going to be talking about?  
23 It's not reasonable, it doesn't make any sense. Think  
24 about how different it is, what they told you about what  
25 the defendant did.

1           It makes no sense that he's asking you to  
2 believe that this is lies and repetition. The acts that  
3 they described, the approach they described from the  
4 defendant, it's different. If it were a lie, wouldn't  
5 you expect to hear that lie repeated? Wouldn't you  
6 expect that that script would be the same? And that's  
7 where details matter.

8           The evidence that you have on this, the details  
9 of what they provided you shows you that's not the case,  
10 this is not repetition, this is not recycled accusation  
11 or recycled information.

12           Six-year-old K [REDACTED] described his penis in her  
13 vagina moving up and down, she described white stuff  
14 coming out on her leg and her needing to go wipe it off.  
15 She described him standing behind her with his penis  
16 touching the hole of her butt, and that it hurt. She  
17 described him standing behind her and his penis going  
18 into her vagina. Then he told her not to tell. That's  
19 how he approached a six-year-old.

20           But when you get to D [REDACTED], who's 15, the  
21 approach is totally different. He talks -- or D [REDACTED]  
22 talks about being 15 years old. There's rubbing of her  
23 body, there's talking about her body, he likes her boobs,  
24 he likes girls with big boobs like hers, and he is  
25 performing oral sex on her, he is using his fingers to

1       manipulate her vagina.

2               He's sticking his penis into her vagina through  
3 her butt crack bent over a stool. That's not recycled  
4 information, that's not recycled accusation. These are  
5 independent accounts of what the defendant did to them,  
6 and that's where details matter, because they describe  
7 their different experiences with him.

8               In going into those details, reflecting on them  
9 for a minute, think about K█████, think about those  
10 graphic details. Are those supposed to have come from  
11 her father or her grandmother? Much has been made or at  
12 least tried to about this comment that she made when she  
13 was around six years old that he put a stick in her body,  
14 something hard.

15              What did K█████ tell you when she was here at 11  
16 years old, what his penis felt like? That it was hard  
17 and that it hurt. You heard from her grandmother, she  
18 didn't even know anything about what happened in the  
19 basement, so how could she be the source of that other  
20 than K█████'s own experience? The evidence you have does  
21 not support that claim that it's fabricated.

22              When they talk about King, the details they  
23 provide are unique, and they may be limited from when  
24 they sat here in front of you, but in no way can you  
25 believe that they're tied to a script, to some kind of

1 call in response or some kind of cue like counsel would  
2 have you believe.

3 And if you think about what they report about  
4 what the defendant did to their bodies, it's consistent  
5 with what Dr. Newton talked about in terms of the nature  
6 of female anatomy before puberty and after, how  
7 penetration of the area of the vagina or of the anal  
8 opening is likely to be a painful experience for a  
9 prepubescent child, not necessarily for an adult or an  
10 adolescent.

11 The body goes through changes. For a  
12 prepubescent child, that hymen is incredibly sensitive.  
13 There are nerve endings in the anal opening that are  
14 incredibly sensitive.

15 And what did K [REDACTED] report? What the defendant  
16 did hurt. What did D [REDACTED] report? She never said that.  
17 She never said it hurt. And that makes sense based on  
18 what Dr. Newton told you about the change in female  
19 anatomy.

20 You're talking about the difference between the  
21 six-year-old and a 15-year-old. Dr. Newton told you a  
22 genital injury is uncommon in her experience, an anal  
23 injury, even less so. And you know now that the lack of  
24 an injury tells you nothing about whether or not  
25 penetration as reported occurred.

1           You heard evidence about two different girls,  
2 two different houses, two different experiences. What  
3 they have in common is not that together, they conspired  
4 against him.

5           What they have in common is that he chose them.  
6 The evidence shows you these girls were vulnerable, they  
7 were age six, age 15. You heard that K██████'s mother  
8 supported this man in spite of what K██████ told her.

9           You know that K██████'s mother stayed with this  
10 man, even though K██████ went to live with her father and  
11 didn't come back. You heard that K██████'s mother brought  
12 this man into a house with D██████ and her sisters were;  
13 that K██████'s mother, Shamia, D██████'s mother, Shantia,  
14 weren't usually around.

15           Maybe before school, but after school, they were  
16 gone for hours at a time. They was sleeping. These  
17 women were literally and figuratively not present, and  
18 that left them susceptible to this man. This  
19 vulnerability is his access to them.

20           Think about D██████, think about why she didn't  
21 tell her mother what King had done. Regardless of timing  
22 and whether she told her mother anything before or after  
23 she saw the video, first and foremost, ask yourself if  
24 that's a significant detail given the passage of time.

25           You know, nonetheless, she did not tell her

1 mother everything that King did. Think about why. She  
2 said she was too afraid, she didn't want to start a fight  
3 between her mom and Shamia, the defendant's girlfriend.  
4 This is Shamia's house.

5 D [REDACTED] just got to live here back with her mom  
6 again, back with her siblings again. She didn't want to  
7 cause a fight, she didn't want to lose that. That's the  
8 reasonable inference that flows, not what counsel is  
9 suggesting, some big fat elaborate lie.

10 And what happened after she told? She told you  
11 she doesn't really get to see her mom, she doesn't really  
12 get to see her siblings. And K [REDACTED], the two of them,  
13 they're out there, they're away from the places they want  
14 to be.

15 K [REDACTED] wanted to be with her mother. You heard  
16 her grandmother say she couldn't understand why she  
17 couldn't talk to her or see her. She told you, herself,  
18 even now, she wants to. These girls don't have motives  
19 to lie, they have motives not to tell you what happened  
20 because they lost things. They have motives not to  
21 disclose what this man did. But here they are speaking  
22 to you years later.

23 You alone evaluate the credibility of witnesses,  
24 you decide who and what to believe. When you think about  
25 how these girls appeared when they testified, ask

1       yourself, did they look like they embellished, did they  
2       look like they added extra words, or is it that they  
3       could barely get the words out?

4               That testimony, the words they got out, that's  
5       enough to find the defendant guilty, but it's not all you  
6       have. You have evidence supporting what they told you.  
7       This video that the defendant wants you to believe is a  
8       lie, that it never existed.

9               Think about the way that D [REDACTED] described it to  
10      you. She sees the defendant rubbing her eight-year-old  
11      sister's naked buttocks, telling her sister, stay in one  
12      place. She's kneeling on a chair in D [REDACTED]'s own  
13      kitchen, and the video abruptly cuts off at the sound of  
14      the front door to the apartment opening. Where could  
15      that have come from but for the fact that she saw it?

16              And how, how would she decide to tell a lie that  
17      could be so easily disproven? Why tell a lie that talks  
18      about something you can touch, that phone, something you  
19      can see, that video, when all it would take is them to  
20      look and see it's not there? Was she supposed to have  
21      seen into the future and know this man would break it and  
22      her lie would be good, her lie would be safe?

23              That's ridiculous. She could never have known  
24      that. She would have been found out in no time. She's  
25      15 years old. It's not reasonable to believe she

1           concocted that lie.

2                       What makes sense is that she did see that video.  
3       She saw it and it broke her heart. You know that's true  
4       not just because of what she told you about it and how  
5       she talked about it, but because of what the defendant  
6       did to that phone.

7                       It shows you not only that D [REDACTED] is telling  
8       the truth about it, but that it's not some great  
9       conspiracy. His actions corroborate what D [REDACTED] said  
10      she saw in that video and what K [REDACTED] and D [REDACTED] say he  
11      had done to them all along.

12                      Let's talk about the phone. At this point, you  
13      know the defendant is somebody who likes to be in  
14      control. You know this from his nickname, his nickname  
15      is King.

16                      You know this from the way he talked to these  
17      girls. You know this because of what he did to the  
18      phone. This issue of consent and his willingness to  
19      show it to the police?

20                      That is an illusion, that is an illusion he  
21      would have you believe. We're talking about a phone that  
22      supposedly has a video of him touching an eight-year-old  
23      child, a phone that he had in his room with him for hours  
24      before the police came. They took that phone from him,  
25      and that's where the problem began.



1                   He wants that phone back. He asks them for an  
2 interview, he demands to have an interview, and he asks  
3 them, bring that phone into the room. He asks for it and  
4 he gets that.

5                   Perhaps against the better judgment of a 24 year  
6 veteran police officer, this man gets that guy to bring  
7 the phone into the room, the phone that was taken from  
8 his possession and the phone he wants back in his hands.  
9 Right onto the table it goes, it's back within his reach.  
10 What better way to get that phone physically back into  
11 his hands than to offer to take him through it?

12                  I'll show you the phone, and they'd have to give  
13 it to him. He had no intention of showing them anything  
14 on that phone because the second he got his hands on it,  
15 he was going to destroy it, and you know that because he  
16 did.

17                  No, you don't need to search it without me, let  
18 me do it, let me have control of the phone. It almost  
19 worked. You heard there was some back and forth about  
20 whether they were going to search it without him or  
21 whether he could consent to regulate what it is they  
22 could see on the phone, but when they didn't take the  
23 bait, when they didn't let him get his hands on it  
24 directly, he took his last shot.

25                  The interview was over, he saw his moment, and

1 he took it. He lunged across the table, he grabbed that  
2 phone, and with the intent so strong to destroy it that  
3 he took his handcuffed hand holding a chair off the  
4 ground to take it in both hands and he broke it, how  
5 strongly he wanted that phone to be gone.

6 Counsel says he's angry, he's frustrated. He  
7 didn't push it off the table, he didn't chuck it across  
8 the room, he did what he planned to the entire time, he  
9 broke the phone that he knew would hurt him.

10 You've heard a lot about what people said, when  
11 they said it, who they talked to, but you have evidence  
12 enough to tune that out because you heard from Dr. Block.

13 At this point, you know, yes, people, including  
14 children, can be subject to suggestion. Yes, false  
15 allegations do happen. That's not something that was  
16 hidden from you, that's out there.

17 You may know that even in your common sense and  
18 your experience. But when you talk about the research  
19 that's out there, you learn children resist suggestion  
20 more when it's a personally salient event, something  
21 that's intimate, personal, invasive. Showing resistance  
22 to suggestion there rather than if we were talking about  
23 something that's like vanilla or neutral, some plain  
24 event.

25 You learned that plausibility matters, the

1       plausibility of the event matters to the degree it could  
2       affect somebody's memory. Counsel argued to you that  
3       these girls want to believe this, so they do? Think of  
4       the examples that were given to you. Plausibility  
5       matters, and the details they provided about what the  
6       defendant did to their bodies, did those sound plausible,  
7       something they're ready to accept or something they had  
8       to live?

9                You've learned that some people disclose in  
10       part, this partial disclosure where they test the water,  
11       they dip a toe in, they see how certain information is  
12       received.

13               You've learned about the effect that fear can  
14       have and you've learned about how trauma impacts memory  
15       and how you may recall the event, what details you can  
16       recall. Think about that gun.

17               She gave you the example of the gun pointed in  
18       your face, that research shows most people can describe  
19       the gun and everything else sort of falls into the  
20       background. That central detail, that hyper focus, you  
21       heard that in these girls' testimony. That central  
22       detail is the part of his body he used to touch them and  
23       put inside them and other things slipped into the  
24       background.

25               His penis, his hard part, the central detail

1 that they accounted for is consistent with what Dr. Block  
2 explained to you, how trauma impacts memory.

3 Counsel suggested, you know, this was not a  
4 great police investigation, that it's important to try to  
5 explore the information that's out there to try to prove  
6 or disprove allegations. They did try to.

7 They had an allegation that there was an eight-  
8 year-old child being indecently touched on that phone and  
9 they tried to get into the phone, and this man stopped  
10 them.

11 Whether or not police were able to get a written  
12 statement from S [REDACTED] that D [REDACTED] said didn't even  
13 exist, is that something that gives you reason to doubt  
14 that D [REDACTED] did write something down? And who did she  
15 give it to? She gave it to Shamia, the defendant's  
16 girlfriend.

17 And now you're supposed to speculate that it's  
18 somehow a failure of police to obtain that information  
19 from a woman like Shamia?

20 D [REDACTED] talked about who saw the video. She  
21 talked about it in a way that suggests some people may  
22 have seen it and some people may have just been in the  
23 room. So the characterization that one, two, three, all  
24 these people down the road saw the video, that's not  
25 supported by the evidence.

1 And even if D [REDACTED] is mistaken about who saw  
2 the video, pointing that out, harping on that, is an  
3 attempt to distract you from why you know the video  
4 exists, because this man destroyed the phone. His own  
5 actions confirmed it.

6 You know the defendant enjoyed a period of time  
7 where he was in control. You know now that he used that  
8 to his advantage. You know he chose his victims well.  
9 Two different girls spoke to you about it, three  
10 different girls had to live it, K [REDACTED], D [REDACTED], and  
11 S [REDACTED].

12 These different girls in two different houses  
13 and three different sets of experiences. What they have  
14 in common is that the defendant targeted them because  
15 they were vulnerable. What they have in common is his  
16 access to them.

17 What they have in common is they have no  
18 credible or reasonable believable reason to lie, and the  
19 defendant's own actions confirm what they tell you.

20 Context matters. Corroboration matters. You  
21 have all the information in front of you in this evidence  
22 to help you decide that the defendant is guilty of these  
23 charges because there's no reasonable reason to doubt it.

24 THE COURT: Thank you, Ms. Siconolfi.

25 Jurors, we're going to take our midmorning

1 recess. I will probably need 20 minutes or so to get my  
2 instructions ready to go, so we'll take our morning  
3 recess now.

4 (Jury recessed at 11:31 a.m.)

5 THE COURT: I believe that a judicial secretary  
6 was making the changes in the instructions. To be clear,  
7 both the aggravated rape charge in this case and the  
8 assault with intent to rape charge are what I would call  
9 statutory rape. Both the rape and the intent is an  
10 intent to have sexual intercourse, it's not an attempt to  
11 use force, and therefore, that portion of the instruction  
12 that was in my first draft will not be there.

13 MS. SICONOLFI: Thank you, Your Honor.

14 THE COURT: I should have something ready to  
15 give you both enough time to look at the changes.

16 MR. TENNEN: Could I be heard on something?

17 THE COURT: Sure.

18 MR. TENNEN: I have to make a record because  
19 I do object to part of the closing, and this goes back to  
20 the Maurice Berry evidence that I was not allowed to  
21 introduce because when the prosecutor was talking about  
22 D [REDACTED], she said, one, no reason to believe she's  
23 fabricating a lie, no reason to believe she made this up,  
24 and then tied it to it's not recycled and she said it's  
25 different than what K [REDACTED] said.

1           She was saying that's why it has to be true,  
2           it's why it can't be a lie, because it wasn't recycled,  
3           it wasn't like what she may or may not have heard about  
4           K[REDACTED]. That's exactly why I should have been allowed to  
5           get in this evidence about Maurice Berry to show where it  
6           came from.

7           I never claimed it came from K[REDACTED], I claimed  
8           it came from that, and now she was able to argue to them,  
9           look, she didn't get this story from somewhere else, it  
10          has to be true. It's exactly why I had to get that in.  
11          And she was able to take advantage of not having that in  
12          by saying that.

13          I don't even know how to fix that, but I think  
14          that was improper argument based on the fact that we had  
15          those conversations about that Maurice Berry evidence,  
16          and now I can't do anything about it to say, no, there is  
17          a way that that wasn't cycled.

18          THE COURT: Ms. Siconolfi, do you wish to be  
19          heard?

20          MS. SICONOLFI: One, the portion of D[REDACTED]'s  
21          testimony that was evidence in this case is not at all  
22          repetitive in any capacity of anything she accused  
23          Maurice Berry of in terms of what the charges are before  
24          the jury.

25          Secondly, counsel's entire case and theory has

1       been that D [REDACTED] had it in her mind knowledge of an  
2       indecent touching of K [REDACTED] when she, quote/unquote,  
3       fabricated her own account. I find the argument  
4       unavailing, Your Honor.

5               THE COURT: Mr. Tennen, you've made your record.  
6       Nothing in the argument changes the reasons for my  
7       evidentiary ruling. I understand the point you're  
8       making, but in my view, the Commonwealth's references to  
9       the evidence not being recycled were fair argument based  
10      on the evidence and a rebuttal to an argument of  
11      fabrication.

12             So I don't think that in any way, the  
13      Commonwealth was alluding to something that was not in  
14      evidence or taking advantage of something that was not an  
15      evidence.

16             MR. TENNEN: It wasn't in evidence, that's the  
17      point, they weren't alluding to that, and so they were  
18      able to say that she had no reason to lie, that she had  
19      no way of fabricating this lie, and that it certainly  
20      didn't come from K [REDACTED].

21             That's the problem. She is arguing what's in  
22      evidence, that's the problem. I couldn't get to argue  
23      what should have been in evidence. So that is an unfair  
24      taking advantage of that --

25             THE COURT: I disagree because, among other



1 things, and I don't want to repeat everything that I said  
2 when I excluded the evidence.

3 But the theory on which this was admissible,  
4 among other problems, involved speculation that somehow,  
5 the fact that someone else assaulted her made her a  
6 better liar, and for the reasons that I put on the record  
7 in some detail balancing the policies under the rape  
8 shield statute and Mr. Jacques's constitutional rights, I  
9 ruled that that evidence should be excluded, and I don't  
10 think there was anything improper about the  
11 Commonwealth's closing argument in that regard.

12 Obviously, there's an argument that the defense  
13 could have made, if I had allowed the evidence, that it  
14 didn't make, and you put that on the record.

15 All right, we'll be in recess. Let me try to  
16 get the revised instructions to you so you can at least  
17 look at the parts that changed.

18 MS. SICONOLFI: Thank you, Your Honor.

19 (Court in recess.)

20 (Court in session at 12:07 p.m.)

21 (Jury not present.)

22 COURT OFFICER: This Honorable Court is back in  
23 session, please be seated.

24 THE COURT: So, Ms. Siconolfi, just direct me to  
25 the page of the instructions and the suggested change.

C E R T I F I C A T E

I, Nancy McCann, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript, prepared to the best of my ability, from the audio recording produced by Court Personnel of the Superior Court Department court proceedings in the above entitled matter.

I, Nancy McCann, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Nancy McCann, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

*(The proper name spellings herein, unless otherwise indicated, are phonetically spelled.)*

\_\_\_\_\_  
Nancy McCann

Approved Court Transcriber

(781) 264-4764

[nancy.mccann35@gmail.com](mailto:nancy.mccann35@gmail.com)

\_\_\_\_\_  
3-1-20  
Date

PLEASE NOTE: THE FOREGOING CERTIFICATION OF THIS TRANSCRIPT  
DOES NOT APPLY TO ANY REPRODUCTION OF THE SAME BY ANY MEANS  
UNLESS UNDER THE DIRECT CONTROL AND\OR DIRECTION OF THE  
CERTIFYING TRANSCRIBER.

001

SUFFOLK, ss.

1  
131

Superior Court Department  
November 2019 Sitting

COMMONWEALTH OF MASSACHUSETTS

v.

Eden Jacques

VERDICT SLIP

001  
SUCR: 2016 - 862 - Assault with Intent to Rape Child as to K [REDACTED] [REDACTED]  
trying to insert his penis into her vagina

In the above-entitled case, we the Jury say that the Defendant is:

1. ☐ Not Guilty
2. ☒ Guilty of Offense as Charged
3. ☐ Guilty of Lesser Included Offense of: Indecent Assault & Battery on a Child  
Under 14

And this is our unanimous decision.

Date: November 22<sup>nd</sup>, 2019

*Henrietta Fennor*  
Foreperson

002

2  
132

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Superior Court Department  
November 2019 Sitting

COMMONWEALTH OF MASSACHUSETTS

v.

Eden Jacques

VERDICT SLIP

002

SUCR: 2016 - 862 - Aggravated Rape of a Child as to K [REDACTED] [REDACTED]  
by putting his penis into her anus

In the above-entitled case, we the Jury say that the Defendant is:

1. ☐ Not Guilty
2. ☐ Guilty of Offense as Charged
3. ☐ Guilty of Lesser Included Offense of: Assault with Intent to Commit Rape of Child
4. ☒ Guilty of Lesser Included Offense of: Indecent Assault & Battery on a Child Under 14

And this is our unanimous decision.

Date: November 22<sup>nd</sup>, 2019

*Kenneth Lannon*  
Foreperson

006

3  
133

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Superior Court Department  
November 2019 Sitting

COMMONWEALTH OF MASSACHUSETTS

v.

Eden Jacques

VERDICT SLIP

SUCR: 2016 - 862 - Assault with Intent to Rape Child as to D [REDACTED] [REDACTED]  
by trying to penetrate her anus with his penis

In the above-entitled case, we the Jury say that the Defendant is:

1. ☒ Not Guilty
2. ☐ Guilty of Offense as Charged

And this is our unanimous decision.

Date: November 22<sup>nd</sup>, 2019

*Kenneth Linnon*  
Foreperson

007 4 134

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Superior Court Department  
November 2019 Sitting

COMMONWEALTH OF MASSACHUSETTS

v.

Eden Jacques

VERDICT SLIP

SUCR: 2016 - 862 - Assault with Intent to Rape Child as to D [REDACTED] [REDACTED]  
by trying to insert his finger into her vagina

In the above-entitled case, we the Jury say that the Defendant is:

1. ☒ Not Guilty
2. ☐ Guilty of Offense as Charged

And this is our unanimous decision.

Date: November 22<sup>nd</sup>, 2019

  
Foreperson

008

5  
135

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Superior Court Department  
November 2019 Sitting

COMMONWEALTH OF MASSACHUSETTS

v.

Eden Jacques

VERDICT SLIP

008  
SUCR: 2016 - 862 - Assault with Intent to Rape Child as to D [REDACTED]  
by trying to penetrate her vagina with his mouth

In the above-entitled case, we the Jury say that the Defendant is:

1. ☐ Not Guilty
2. ☒ Guilty of Offense as Charged

And this is our unanimous decision.

Date: November 22<sup>nd</sup>, 2019

  
Foreperson

009

6  
130

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Superior Court Department  
November 2019 Sitting

COMMONWEALTH OF MASSACHUSETTS

v.

Eden Jacques

VERDICT SLIP

009  
SUCR: 2016 - 862 - Indecent Assault & Battery on a Person over 14 as to D [REDACTED] [REDACTED]  
By touching her breasts with his hands

In the above-entitled case, we the Jury say that the Defendant is:

1. ☐ Not Guilty
2. ☒ Guilty of Offense as Charged

And this is our unanimous decision.

Date: November 27<sup>th</sup>, 2019

*Kenneth Jenson*  
Foreperson



011

SUFFOLK, ss.

7  
137

Superior Court Department  
November 2019 Sitting

COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS

v.

Eden Jacques

VERDICT SLIP

011  
SUCR: 2016 - 862 - Indecent Assault & Battery on a Person over 14 as to D [REDACTED]  
By touching her genital area with his hands

In the above-entitled case, we the Jury say that the Defendant is:

1. ☐ Not Guilty  
2. ☒ Guilty of Offense as Charged

And this is our unanimous decision.

Date: November 29<sup>th</sup>, 2019

*Harriet Lenson*  
Foreperson

012

8  
138

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

Superior Court Department  
November 2019 Sitting

COMMONWEALTH OF MASSACHUSETTS

v.

Eden Jacques

VERDICT SLIP

SUCR: 2016 - 862 Indecent Assault & Battery on a Person under 14 as to S [REDACTED] [REDACTED]  
By touching her buttocks with his hand

In the above-entitled case, we the Jury say that the Defendant is:

1. ☒ Not Guilty
2. ☐ Guilty of Offense as Charged

And this is our unanimous decision.

Date: November 29<sup>th</sup>, 2019

*Kenneth Lannon*  
Foreperson

013

SUFFOLK, ss.

9  
139

Superior Court Department  
November 2019 Sitting

COMMONWEALTH OF MASSACHUSETTS

COMMONWEALTH OF MASSACHUSETTS

v.

Eden Jacques

VERDICT SLIP

SUCR: 2016 - 862 Posing Child in State of Nudity as to S [REDACTED] [REDACTED]  
Video depiction by cellphone

In the above-entitled case, we the Jury say that the Defendant is:

1. ☒ Not Guilty
2. ☐ Guilty of Offense as Charged

And this is our unanimous decision.

Date: November 22<sup>nd</sup>, 2019

  
Foreperson

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT DEPARTMENT  
DOCKET NO. SUCR 1684CR00862  
1784CR00800

-----X  
COMMONWEALTH :  
  
v. :  
  
EDEN JACQUES, :  
Defendant :  
-----X

DEFENDANT, EDEN JACQUES, NOTICE OF APPEAL

Defendant, Eden Jacques, hereby hereby appeals his convictions and judgment  
pursuant to Mass.R.App.P. 3 & 4(a).

Dated: 11/26/19 *filed*

Respectfully submitted,

EDEN JACQUES  
By His Attorney,



Eric Tennen, BBO # 650542  
Swomley & Tennen, LLP  
50 Congress Street, Suite 600  
Boston, MA 02109  
Tel. 617-227-9443  
etennen@swomleyandtennen.com


CERTIFICATE OF SERVICE

I, Eric Tennen, hereby certify that I have duly served the foregoing document(s) to the following counsel of record in hand, on this 26<sup>th</sup> day of November, 2019

Kyle Siconolfi

Signed under the pains and penalties of perjury, this 26<sup>th</sup> day of November, 2019

:

  
Eric Tennen